

CONFIRMATION HEARINGS ON FEDERAL APPOINTMENTS—WILLIAM P. BARR

HEARINGS

BEFORE THE

COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

ONE HUNDRED SECOND CONGRESS

FIRST SESSION

ON

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CONFIRMATION HEARING ON THE NOMINATION OF WILLIAM P. BARR TO BE ATTORNEY GEN- ERAL OF THE UNITED STATES

TUESDAY, NOVEMBER 12, 1991

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The committee met, pursuant to notice, at 2:18 p.m., in room SD-226, Dirksen Senate Office Building, Hon. Joseph R. Biden, Jr. (chairman of the committee), presiding.

Present: Senators Biden, Kennedy, Metzenbaum, DeConcini, Leahy, Heflin, Simon, Kohl, Thurmond, Hatch, Simpson, Grassley, Specter, and Brown.

OPENING STATEMENT OF CHAIRMAN BIDEN

The CHAIRMAN. Before we begin the hearing, I want the record to show that last night I attended a basketball game, the Milwaukee Bucks versus the Philadelphia 76er's, as a consequence of the kind generosity of the Senator from Wisconsin, who has a mild interest in the Milwaukee Bucks. And I must say I was publicly embarrassed because as he was listening to the game heading home, apparently the announcer said, "And there's Senator Biden rooting for the 76er's." He has just presented me with a pen, the Milwaukee Bucks. I will try to do better next time, Senator, but thank you nonetheless for accommodating my ability to see the game.

Senator DeCONCINI. An endorsement?

The CHAIRMAN. Well, yes, it is an endorsement of Wisconsin.

Senator LEAHY. Of Senator Kohl.

The CHAIRMAN. At any rate, it is always easy to endorse Senator Kohl.

Well, welcome, General. It is a pleasure to have you here. It is a delight to have you before the committee, and I am sure you are delighted that we have finally reached the point that we are here. You know this committee well, and I have enjoyed our work together in your previous incarnation. I look forward to us being able to continue to work together.

You know the process. I have an opening statement. I will invite my colleagues, if they have brief opening statements, to make theirs, and then we will invite you both to introduce your family and make an opening statement and then we have some questions, if we may.

Today the Judiciary Committee opens its hearings on the nomination of William Barr to be Attorney General of the United States.

The Office of Attorney General is unique among the President's Cabinet. The Attorney General is a member of the President's administration, but his allegiance is not to the President alone.

As the Nation's most senior lawyer, the Attorney General's oath of office—to defend the Constitution and to faithfully execute the laws of the land—takes on a special meaning. His commitment to that oath may not be compromised, even in the name of serving the President of the United States.

To put it another way, the Attorney General is not the President's personal lawyer. That role is served by the White House counsel. The Attorney General is more properly considered the people's lawyer. His allegiance must be to the public; he must protect and enforce the rights of all Americans.

Of course, the Attorney General serves the President in many ways, and among others, he advises the President on the constitutionality or legality of proposed actions or policies; he assists the administration in determining what positions the Government will present in Federal courts; and he directs the Department of Justice in serving the legitimate goals of the administration in all law enforcement matters.

But he must also be prepared to tell the President, in my view, that a proposed course of action would violate the Constitution or the laws of the United States, even when that advice is not what the President wishes to hear.

In short, while working to serve the President, the Attorney General has the unique responsibility to the public that requires him to maintain independence from the President's personal and political interests.

Fulfilling one's duty to the President without surrendering the necessary independence presents a dilemma for every Attorney General, and it has presented a dilemma for every Attorney General in the past. Understanding that these competing responsibilities must be carefully balanced is one of the most important attributes an Attorney General, in my view, can bring to this job.

It is my opinion that, in recent years, the Attorney General and other senior officials within the Department of Justice have not always found the proper balance between these two competing interests.

There has been a tendency, in my view, to blur the distinction between the role of Attorney General and the Justice Department on the one hand, and the White House counsel on the other.

The country, in my view, is best served when these roles are clearly delineated and purposely separated. The rule of law is best preserved in this Nation when our Attorney General is dedicated to the law first, and the President's political agenda second.

As a result, in these hearings, much of my focus will be on how Mr. Barr views the proper relationship between the Attorney General and the President.

This issue is of particular concern to me because, during his years in Government service, Mr. Barr has gained the reputation as a staunch defender of broad executive power.

As I indicated to you earlier, General, I am going to want to talk to you about that. And I say that, by the way, not in any way suggesting you have compromised anything; just your philosophic view of the role of the Executive and the Congress. Because if your reputation as being such a staunch defender of broad executive power is deserved—and that is a matter to be determined in these hearings—Mr. Barr may be sympathetic to efforts of the current administration to enlarge and consolidate the power of the Executive, with an accompanying disdain for the legitimate role of Congress as a coequal branch of the Government.

Because the Attorney General's preeminent responsibility is to uphold the Constitution and enforce the law, he must adhere to the Constitution's division of responsibility and power between and among the branches of Government—whatever his own ideological view or those of the President may be.

Mr. Barr, in these hearings I will ask you about several areas where the Constitution's division of power between the Congress and the President has caused some tension.

For example, I will seek your views on the war-making power, on the independent counsel statute, and on the veto power, and on the judicial nominations process, among other things.

And I suspect you will get questions from me, if I have a second round and they have not been asked already, about the Justice Department's handling of the BCCI matter as well.

I will also ask you about several areas relevant to the Attorney General's role as the Nation's chief law enforcement officer. This committee and the Attorney General each bear responsibility for the shaping and implementing of the Nation's crime policy.

So your intentions with respect to fighting the war on crime and your role in directing the Department's handling of criminal investigations are of great interest to me and to the committee.

Mr. Barr, you have appeared before this committee twice before, each time winning confirmation to a position within the Department of Justice for which you were appointed. As Deputy Attorney General and more recently as Acting Attorney General, you have had substantial contact with this committee. From my personal perspective, the contact has been harmonious, and you have always been cooperative.

We welcome you back, and we look forward to discussing the issues I have mentioned and others with you in the course of these hearings. It is my hope and intention that we will be able to finish these hearings in a timely manner and let the Senate work its will on your nomination.

Again, welcome, and I now yield to my colleague from South Carolina.

OPENING STATEMENT OF SENATOR THURMOND

Senator THURMOND. Thank you, Mr. Chairman.

This afternoon we begin the confirmation hearing on Mr. William P. Barr, President Bush's nominee to be the Attorney General of the United States. The position to which Mr. Barr has been nominated is one of the most important in the Federal Government.

The Attorney General is the chief law enforcement officer of the Federal Government and has ultimate responsibility in regards to major civil litigation involving the United States. He also gives advice and provides legal opinions to the President on a wide range of issues. The Attorney General manages some 88,000 employees nationwide and oversees major components of the Department of Justice, such as the FBI, DEA, INS, U.S. Marshals Service, Bureau of Prisons, and U.S. Attorneys.

The person entrusted with this grave responsibility must perform the duties of this office in an independent and uncompromising manner. I am confident that in Mr. Barr we have a nominee who demonstrates all the fine characteristics an Attorney General must possess; namely, integrity, good judgment, competence, courage, professionalism, and independence.

I believe Mr. Barr understands the importance of this position, having served as a Deputy Attorney General and more recently as the Acting Attorney General. His service in these positions has clearly shown that he will continue to ably perform once confirmed.

Mr. Barr has demonstrated he can make tough decisions. It was this nominee who, as Acting Attorney General, orchestrated a pre-dawn prison rescue that freed nine hostages with no loss of life.

Mr. Chairman, Mr. Barr's background and experience will serve him well in this position. He received a bachelor of arts degree in 1971, a master's degree in 1973 from Columbia University. In 1977, he earned a law degree from George Washington University Law School. During law school, Mr. Barr served in the Intelligence Section and Office of Legislative Counsel in the Central Intelligence Agency, after which he served as a law clerk to the Honorable Malcolm Wilkey, of the U.S. Court of Appeals for the District of Columbia Circuit.

From 1978 to 1982, he was an associate with the law firm of Shaw, Pittman, Potts and Trowbridge. Mr. Barr then served as a Deputy Assistant Director of the Office of Policy Development in the Executive Office under President Reagan. He rejoined the law firm of Shaw, Pittman, Potts and Trowbridge as a partner in 1983.

In 1989, Mr. Barr was nominated and confirmed as Assistant Attorney General for the Office of Legal Counsel in the Department of Justice. In 1990, he was confirmed as a Deputy Attorney General. President Bush has now nominated Mr. Barr to serve as the Nation's chief law enforcement officer.

Mr. Chairman, Mr. Barr is an individual with vast experience, a thorough understanding of our system of government. He realizes the importance of the role of the Attorney General and the responsibilities that would be imposed upon him. I believe he will give competent advice and fair opinions to the President on all issues that may arise. He will be ever mindful of the trust and confidence placed in him by the President as he carries out the duties of this esteemed office.

Mr. Barr, you are to be congratulated on your nomination to this important position, and I look forward to hearing your testimony.

Thank you, Mr. Chairman.

OPENING STATEMENT OF SENATOR KENNEDY

Senator KENNEDY [presiding]. Thank you.

I join in welcoming Mr. Barr back to this committee and commend him on his nomination to be Attorney General and join in welcoming his family here today.

The Attorney General of the United States is a symbol of American justice and one of the highest positions of public trust in the land. All of us look forward to a close and cooperative, constructive relationship with the Department of Justice under his leadership.

As our Nation's chief law enforcement officer at a time of scarce resources, Mr. Barr will face a unique challenge. We have not done enough over the past 20 years to equip law enforcement officials for the task of fighting crime. Tens of thousands of Americans who fall victim to crime each day know that more must be done. And the criminal justice system is bursting at the seams, causing prosecutors, courts, judges, and prisons to call for more help.

Thousands of offenders convicted of serious crimes are released too soon because our system is overloaded. Today 1 million offenders are in prison and 2.5 million more are free on probation or parole.

Getting tough on crime means equipping our criminal justice system with the resources and tools it needs to put criminals away, and it means having enough officers on the streets to apprehend criminals, and it means having enough Federal and State prosecutors to deal with offenders, enough judges and court personnel to conduct trials, and enough prison cells, not just cots in the desert, to incarcerate those who should not be free to roam our communities.

Finally, it means investing in programs that are genuinely capable of preventing crime. To build a new prison costs the Federal Government as much as \$85,000 per inmate. A place in a Head Start facility costs 5 percent as much, and it cuts the teenage arrest rate by nearly half. It is pennywise and pound-foolish for Congress and the administration to spend vast sums for new prison cells and refuse to allocate a small fraction of that amount for new places in preschool classrooms.

Mr. Barr comes before this committee with a distinguished record of public service in the Central Intelligence Agency, in the White House, and the Department of Justice, as well as in the private practice of the law. I look forward to his testimony this afternoon, and I congratulate him on his nomination and look forward to working with him in addressing these issues that are so critical for the future of our society.

Senator Hatch.

OPENING STATEMENT OF SENATOR HATCH

Senator HATCH. Thank you, Senator Kennedy.

In William Barr—and I welcome you to the committee, Mr. Barr—President Bush has nominated a tough law and order public servant to be Attorney General. Just as important, Mr. Barr is firmly committed to equal opportunity under the law. He demonstrated that again last week when he initiated administratively a fair housing testing program at the Department of Justice to

combat housing discrimination. I was especially pleased to see the Department undertake this program as a response to legislation that I introduced in the last two Congresses.

At the same time, I am confident that Mr. Barr will be equally vigilant in opposing racial, ethnic, and gender preferences, and reverse discrimination.

William Barr is not a member of President Bush's political or personal inner circle. He is not part of the President's political brain trust. He is not a politician or a former politician who brings political clout to this position or carries political weight in one of the 50 States.

William Barr is just a lawyer's lawyer, that is all. President Bush's nomination of Mr. Barr is one more example that persons with talent and merit can and do rise to the top in our country. Talent, merit, and performance are the only reasons William Barr sits before us today, as Acting Attorney General and as nominee to become Attorney General.

So I commend the President for this fine nomination. I congratulate you, Mr. Barr, for your sterling record.

After obtaining two degrees from Columbia University, William Barr went to work for the Central Intelligence Agency, attended law school at night for 4 years and obtained his law degree from George Washington University. After clerking for Judge Malcolm Wilkey of the U.S. Court of Appeals for the District of Columbia, he became an associate at Shaw, Pittman, Potts and Trowbridge here in Washington.

For a year-and-a-half in the first Reagan term, Mr. Barr served as Deputy Assistant Director of the Office of Policy Development. I hope I will not embarrass Mr. Barr when I pause to marvel at his rise from a relatively obscure Federal position to this nomination 8 years later to the No. 1 legal position in the executive branch. This rise is nothing short of phenomenal.

In between, Mr. Barr became a partner at his former law firm. He was tapped to become Assistant Attorney General for Legal Counsel in 1989. I have to say his performance there merited his promotion to Deputy Attorney General. His conduct in that office has continued to be impressive, and he is now before us as the President's nominee to become Attorney General of the United States.

Will he be tough enough when the situation calls for it? As Acting Attorney General, faced with an inmate uprising and hostage taking at a prison in Alabama, he exhibited sound judgment, courageous leadership, and took the tough action that was necessary when the chips were down.

I will close by quoting from an unlikely source, the New York Times editorial page, because it had some kind words for Mr. Barr. Here is part of what the October 20, 1991, editorial said:

William Barr . . . is an able and energetic lawyer who has already displayed strong loyalty to his client in the White House. In various high-ranking Justice Department jobs, he has boosted the Administration's hard-line crime legislation and endorsed its view of executive power.

Perhaps the New York Times viewed this latter comment as a criticism, but I regard it as a compliment.

The editorial continued, in part:

As Acting Attorney General this summer, Mr. Barr made key decisions under pressure that led to the rescue of hostages in the uprising at the Talladega Prison in Alabama. He impressed Mr. Bush as much for not grandstanding as for firm leadership.

Mr. Barr has also impressed many in Congress, even those who disagree with him, for his forthrightness. * * *

So I congratulate you on having this great opportunity. You have earned it. I think you will make a great Attorney General. I know that you will give sound advice and that you will have good judgment backing up that sound advice. And I don't know what more you could ask for in a person for this particular important position in the executive branch of this Government. And I think the President has made a wise and very good choice in picking you for this job, and I look forward to seeing you confirmed.

Senator KENNEDY. Senator DeConcini.

OPENING STATEMENT OF SENATOR DeCONCINI

Senator DeCONCINI. Thank you, Mr. Chairman.

Mr. Barr, we welcome you and your family. We are pleased to have you here. If confirmed, Mr. Barr, you will bring a considerable amount of Government experience based on your background working in the Government. I think that is very positive. From all indications, it appears that you have done a good job in all of these positions, being confirmed here before unanimously with little or no debate.

But because of the important role that the Justice Department plays in enforcement of this country's laws, I have always been a strong believer that the office of Attorney General should be as nonpartisan as possible. I realize the political aspects and reality of our system here, but, nevertheless, that is my own feeling.

In my mind, the nominee for Attorney General has to be able to demonstrate the ability to exercise nonpartisanship in carrying out the duties of that office, for not only may the President call on the Attorney General, but he must be a lawyer's lawyer, as the Senator from Utah said, as well as chief advocate for the rights of all Americans. And as such, there should be little room for politics. I hope that you realize and understand that political ideology cannot be substituted for fair and effective law enforcement.

In many respects, the Justice Department is one of the most important agencies in the Federal Government, in my judgment. If confirmed, you will serve as the country's chief law enforcement officer. It will be your responsibility to work closely with your law enforcement counterparts, not only in the Federal Government but in the State and local governments as well.

You and I have spoken, Mr. Barr, before, at great length on the need for improved cooperation in our law enforcement efforts. Over the last few years, Federal law enforcement efforts have been greatly hampered by the inability of Federal agencies to work together. How can we win the war on drugs and defeat organized crime and stem the growth of violent crime in our communities if our own law enforcement agencies are battling amongst themselves? Well, we can't, and we are not.

The bottom line for this Senator is whether you will be able to take the lead in bringing these agencies together in a united effort

to protect our citizens. You have spent many years in the executive branch, and I know you are well aware of the turf battles that are there on a day-to-day basis. That is why I hope that you are a nominee who will take positive steps to eliminate these interagency battles, not aggravate them.

I hope to pursue this issue further through questions, and I am interested in hearing your ideas on how you would address this problem. I know you have had experience with it.

The spirit of cooperation must extend to the States and local governments as well. After all, it is the men and women in uniform patrolling the streets and highways in our States who are the front line of our fight against crime. They rarely have the support of the Federal Government except when there is a personal relationship developed on the local level.

The local police and sheriff departments cannot be left to swing in the wind by the Justice Department. Instead, they must be able to look to the next Attorney General as a partner in the war on drugs and against gangs. As Attorney General, you will be responsible for the administration of a number of law enforcement entities, each with a distinct mission. For some time, I have expressed my concern that one of these agencies, the U.S. Border Patrol, has been neglected by the Department of Justice and treated as a step-child, despite its role in the war on drugs, especially along the Southwest border.

The Border Patrol is an agency which is understaffed and woefully ill-equipped to perform its own mission. You do not win a war, without deploying all the resources, and we have done an embarrassing job in respect to the Border Patrol. They are responsible for nearly 60 percent of all drug seizures along the United States-Mexican border, and serve as the lead agency in the interdiction of narcotics between the ports of entry.

The job they do, with the resources they have been given, is quite remarkable. But something has to be improved. I hope to get some assurance from you, Mr. Barr, that this issue will become a priority, and that, at least, the Border Patrol will achieve the attention it deserves from the Justice Department. The next Attorney General must work to restore the public's confidence in the Department's role in protecting their rights.

It appears to me that you fully understand the importance of this position and, from what I can see, you were chosen for your competency, and not for your ideology or your political background. We need an Attorney General who can take a position that his or her President might not like, but that the law requires, and give that kind of advice.

I look forward to your testimony and will have a number of questions to address to you, Mr. Barr.

Thank you.

The CHAIRMAN. Senator Grassley.

OPENING STATEMENT OF SENATOR GRASSLEY

Senator GRASSLEY. Mr. Barr, it seems to me like you bring a distinguished record of public service before this committee today. You seem very well suited for your newest challenge.

I think you have a very impressive career and a series of high-level positions in the Justice Department. The fact that you have been confirmed by this committee and the Senate twice before I think is important, as well.

I remember, as an Assistant Attorney General, your being in charge of the Office of Legal Counsel, where you gave the President objective advice as to the legality of various important public policy proposals. I especially remember that, despite the fact that President Bush and many members of this committee would have preferred that, for reasons of policy, the Supreme Court's flag-burning decision could have been overturned by statute, you stuck to your conclusion that a constitutional amendment would be required.

You have also served with distinction as Deputy Attorney General, bringing into that office, at a time when morale in the department was not so high, leadership that was badly needed. Your performance in that job was so successful that, when the position of Attorney General became vacant, President Bush nominated you to be Acting Attorney General, rather than waiting to name a permanent replacement.

Also, I think of the time that, prior to your work serving in various capacities in Government, with the CIA and the White House as preparing you well for your job, the fact that you had to work hard attending law school at night, practicing law in the private sector before coming to the Justice Department, all bringing a great deal of diversity of legal experience to this new position.

The President's confidence in naming you as Acting Attorney General is well justified, for, as Acting Attorney General, you have shown outstanding leadership. Three days in the job, you faced that major crisis at Talladega with the Federal prison there. You did not avoid taking risks to protect your chances for the job that you now hold, nor did you take any unnecessary risks with the lives of the hostages, with the hopes of advancing a career. You acted decisively and responsibly to maximize chances for success in freeing the hostages, without causing death or serious injury, and, of course, in this respect, all that you did was successful.

In short, I say that you have all the makings of a great Attorney General, and particularly I say this, because it is a time when public officials are not held in high regard by the public that we serve. So, I hope that your being appointed to this will serve somewhat as an antidote to cynicism and to distrust.

You are a capable administrator and I believe, from what I have read about you, a wise counselor, and these are two important roles that you must fulfill in your new position, so I am confident that you will continue to pursue the important work of the Justice Department, as you become our Nation's Attorney General.

Thank you.

The CHAIRMAN. Senator Leahy.

OPENING STATEMENT OF SENATOR LEAHY

Senator LEAHY. Thank you, Mr. Chairman.

Mr. Barr, welcome to you and to your wife, and I might say three patient, very lovely daughters, who have been extremely patient with us.

I find this an extremely interesting time, with your nomination, and I hope that it is an indication of a change, frankly, from your two predecessors. The next Attorney General is going to confront some great challenges, and today the most serious threat to our Nation is not from a super power thousands of miles away, but is from some very grave crises here at home.

While crime threatens our safety, even in our own home, children are killing and being killed in wars over drugs, the administration has talked tough, but I am not sure it has done a great deal.

Major scandals like BCCI have not been pursued. They appear to be swept under the rug. Meanwhile, the Justice Department, while these things are not being taken care of, does not hesitate to move very, very quickly to undercut the authority of a Federal judge, a Federal judge in Wichita. It tries at every turn to eviscerate privacy rights, it has gone as far as to prohibit doctors from providing full health care information to poor women.

And when we should have been going after drug kingpins, the Justice Department used its resources to snoop around libraries to see what people were reading. Considering what our educational scores are these days, we ought to be encouraging people to read, not sending the FBI around to see what they are reading.

Now, in light of these failings, a lot of people question whether the Federal Government can deal with the problems at hand. After too many scandals and one special counsel investigation after another, the public trust is no longer a given. The Justice Department has to earn back the trust of the people by enforcing the laws, as simple as that, fairly, evenly and vigorously.

The Attorney General has to respect the constitutional rights of all of us. He has to pursue the haves and have nots with equal vigor, the white collar criminal as well as the poor, the drug trafficker as well as the user.

The American people understand the symbolic tough talk and gestures like the death penalty for gas station murders or a suspension of habeas corpus. These are merely diversions from a losing battle against crime. This symbolism erodes confidence in law enforcement.

Throughout the country, there is despair for the cop on the beat who is fighting a hopeless battle, disdain for the judge behind the bench who could not possibly keep up with the docket, and outrage at political leadership who claim victory by ignoring blatant reality. This loss of faith in the fair enforcement of the law means loss of faith in the legal ties that bind our society.

The greatest challenge for an Attorney General is to inspire confidence in the public, the Congress, the court and the President. Each will expect something different from you. The public is going to demand that you justly enforce Federal law, the Congress that you remain independent, the court that you preserve your integrity and uphold the Constitution, and the President that you serve as his confidant and advisor. You are going to have to balance yourself on a very difficult fault line in between.

If confirmed, you, more than any single individual but the President, is going to have to grapple with these problems. To do the job well, you are going to have to remain objective, you are going to have to rely on the professionals who work for you, you have to resist pressure to make the Department of Justice an outpost for the political agenda of the Republican National Committee, not the easiest thing in the world to do in a Presidential election year.

Now, there are a number of issues I want to discuss with you during the hearing. First, incidentally, let me join those who commended you on handling the Talladega hostage incident. We have discussed this in private, and you know the high regard I have for your handling of that. Your judgment and willingness to make a tough decision during that crisis were exemplary.

But there are other matters of concern to me, including the department's handling or mishandling of the BCCI scandal, Justice's unwise involvement in the Wichita operation rescue matter, your views on the judicial nominations process, and other criminal, constitutional and even some technological issues.

And as we have discussed before, I am particularly concerned that the Justice Department move beyond a partisan, unresponsive approach, one that has taken to this Congress and this committee, in particular, in the last few years. You may recall, I made a couple of comments about that in your first hearing here as Deputy Attorney General.

Your predecessor, former Attorney General Thornburgh, viewed the Congress as a nuisance, and when he appeared before the committee, he made it very clear he had something more important to do than talk with us. So, the burden is going to be on you to establish a constructive working relationship and to be responsive, accessible to members of Congress. You could even break the tradition and respond to letters from Congress.

If you assume control of the Department of Justice, you would do well to remember Justice James Iredell's assessment in 1792, he said the Attorney General—and I mention this, because of a comment made earlier by one of the other Senators—the Attorney General "is not called the Attorney General of the President, but Attorney General of the United States," all of us.

So, whether you are that rare public official who is dedicated to the job, rather than the individual who appoints you, or a footnote in history, liked your immediate predecessor, that is going to be up to you. [Laughter.]

I mean this seriously. The country needs a person of strength and dedication who is going to serve all Americans. The Attorney General, probably as much or more than anybody in the whole Cabinet, is supposed to be there for all of us, Republicans, Democrats, conservatives, liberals, moderates, whatever. I hope for everyone's sake that you are that person.

You have all the background to be that person, if you want to be, and it is going to be entirely up to you.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much.

Senator Simpson.

OPENING STATEMENT OF SENATOR SIMPSON

Senator SIMPSON. Mr. Chairman, I thank you very much for holding this hearing swiftly, to accommodate the President and put the Attorney General in place before we recess at the end of this month.

I welcome the Acting Attorney General to the committee and his wife Christine and his three delightful daughters, Mary, Patricia, and Margaret, who are very patient there. Indeed, you are.

Just a comment or two, while many of us, I think, here on the committee in Washington are aware of this point, I think that observers of this committee should see that executive branch appointments differ greatly from nominations to the Federal court system. But, as you can see, there is plenty of partisanship left over for this one, too.

But Federal judges derive their power from article III of the Constitution, which describes the Federal judiciary, even though the President, who derives his powers from article II of the Constitution, nominates judges. Once the judges are confirmed, they are interdependent and independent of the President.

In contrast, the position of Attorney General is a position within the executive branch. That is what it is. The Attorney General may be fired at will by the President. I think people may not understand that. He serves at the President's pleasure. Thus, the Attorney General derives his powers, which are grounded in article II of the Constitution, from his appointment by the highest authority in article II, which is the President.

Therefore, Attorney General and other executive branch appointments are not really intended to be impartial the way a judge is required to be. Instead they are supposed to put into effect the program of their President. I did want to make that distinction clear to some who have observed the committee in previously considering a judicial nomination, we are not looking for judicious impartiality in Mr. Barr. Instead we are looking for an honest and capable person who will fairly and effectively advance the program of the President. That has been the history of the job, Democrat and Republican alike.

Mr. Barr, your presence here is a testament to your wise and careful and judicial handling of the management of the Justice Department. It is not often, as others have said on this panel, that a young and relatively unknown acting Attorney General is chosen over more senior and well-known figures in the legal community to become the President's lawyer. And over the years, those people have consisted of the President's campaign managers, personal attorneys, down through the ranks of Democrat and Republican Presidents.

You have been selected in this case on a singularly different basis than many of the Democrat and Republican Presidents who have gone before because this President has the utmost confidence in your judgment, your intelligence, your capabilities, your prudence. Your professional record is exemplary. A master's degree in Chinese studies, service in the Office of Legislative Counsel, LA, I will not go into those. Those have been covered. I ask those to be included in the record.

You have appeared before this committee twice before. You were confirmed without opposition to be the Assistant Attorney General for the Office of Legal Counsel. You were later confirmed without opposition to be a Deputy Attorney General. I believe that speaks to your qualifications and your abilities which all of us, on this committee, have recognized.

I look forward to hearing your answers to our questions. I heard the discussion of BCCI come up several times, and let us go into that. I want to do that, too. I want you to tell them about the convictions in Tampa. I want you to tell them about the second round. I want you to tell them about the people who are in the clink and that were put there while you were involved there.

I am confident that you will show us that President Bush has chosen a very good man for a very tough job.

I thank you, Mr. President.

The CHAIRMAN. Thank you, very much.
Senator Simon?

OPENING STATEMENT OF SENATOR SIMON

Senator SIMON. Thank you, very much, Mr. Chairman.

First, I think that as Attorney General you can have a very good relationship—as my colleague, Senator Leahy has indicated—with the Senate. I think a better relationship than your two predecessors. I agree with Senator Simpson that the President has chosen someone who is honest and capable. I disagree with my friend, Senator Simpson, however, when he refers to you as the President's lawyer. The President has a counsel in the White House. You are the lawyer for the people of the country and we want you to always remember that. You serve in the President's Cabinet, you serve at the President's will, but you are not the President's lawyer, you are the lawyer for all the people in this country.

And I think on the basis of what I have seen from you, the people are going to be well served. Let me just add one other area where Senator Simpson and I would agree is that you are a person who is willing to dig in and work on legislative changes that are needed.

I recall, particularly, one night sometime after midnight, you came up to the Senate floor and we worked out an amendment when it would have been very easy for you to say, I will see you in the morning or have someone else handle it. And I appreciate that. I have every reason to believe you are going to do a fine job as Attorney General.

I look forward to this questioning period when we kind of lay the groundwork. I think these confirmation hearings are important even when the odds are overwhelming someone is going to be approved.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Brown?

OPENING STATEMENT OF SENATOR BROWN

Senator BROWN. Thank you, Mr. Chairman.

Mr. Barr, I want to add my welcome to your visit here, today. You have an exceptional background that I think all of us are im-

pressed with. We are particularly impressed that someone with your options in life would choose to serve this country when you have many jobs that would pay a great deal more than this. If you are able to explain that to your wife, you should know that we deeply appreciate your sacrifice and your family's sacrifice.

You are going to need all of those exceptional abilities. As I read the committee, half are going to vote for you because you will be the President's attorney, and half are going to vote for you because you will be the people's attorney. If you can get through that one, I think you will not have any problems with the job, itself.

Many have suggested that you got here without involvement in politics, primarily doing a superlative job in the responsibilities that you have had. And what I have read about you primarily indicates that. But the Washington Post, I notice, has uncovered your campaigning for President Nixon. I assume that was a speech in opposition to the future President Kennedy which you delivered in elementary school.

But I notice it does raise a religious issue with the nun promising to pray for you, presumably because of her concern about your judgment in that regard. But that judgment, I think, is what this committee is going to look at.

We have heard about BCCI and I think that is an appropriate area to be addressed because it is an example of issues that will come before you and I think it gives this committee a chance to understand how your thinking process works in looking at questions like that.

The Inslaw case, I think, is another one. Perhaps important for itself, but important in examining your thinking process. I believe there is going to be a focus on whether or not you will be simply a law enforcement officer or a political officer. My guess is that all members of this committee would admit your responsibilities have a little of both.

We are going to be looking at the kind of philosophy you bring to resolving that contradiction. But all of us, I think, appreciate the fact that someone with your background, with your exceptional ability, and your integrity would choose to serve our country.

We appreciate your coming before us today.

The CHAIRMAN. Thank you, very much.

Senator Kohl.

OPENING STATEMENT OF SENATOR KOHL

Senator KOHL. Thank you, Mr. Chairman.

Mr. Barr, I also welcome you. This is the third time in 3 years that you have been before this committee for confirmation. When I, as a committee member, consider a nomination for an executive branch position, I approach the process with the presumption that the individual nominated is qualified for the office. And unless events have occurred that I am not aware of, and based on your record, and having chaired your last confirmation hearing, I am inclined to support your nomination to be Attorney General.

Nevertheless, our oath of office obligates us to examine your fitness to serve as Attorney General. We must conclude that you possess the necessary legal qualifications, that you will relate the law

to the basic values we have embraced as a nation, and that you will serve as a lawyer for the people as well as for the President.

Consequently, there are some areas in which I have questions. I want to know about your general philosophy and approach as the Nation's chief law enforcement officer; and I want to know your views in such areas as juvenile justice, State and local cooperation, and the competing loyalties of the Attorney General.

I enjoyed meeting with you last month, and I was encouraged by what you said. The root of the crime problem, the cause and not merely a symptom, is found throughout our society. It is in the workplace, in our schools and in our homes, not just in the criminal element. To overcome this violence we must take a more comprehensive approach—an approach that empowers our communities, educates our youth, reestablishes a strong family structure, and keeps guns out of the hands of criminals and drug traffickers, as well as one that emphasizes crime control.

Without doubt, the Nation will be looking to you, as Attorney General, to provide leadership in this area.

Mr. Barr, inside the beltway people frequently are more interested in what constitutes a good sound bite, than what is constitutionally sound. I believe that if you are confirmed you will find that approach unacceptable, that you will work towards real achievements, and not just political wins.

Our earlier talks have led me to believe that you will seek goals and solutions and not merely the political advantage of the moment.

To this end, I look forward to learning more of your thoughts and your views, and I wish you and your family well.

Thank you, and thank you, Mr. Chairman.

The CHAIRMAN. Thank you, very much.

General, will you stand to be sworn?

Do you swear the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. BARR. I do.

TESTIMONY OF WILLIAM P. BARR, TO BE ATTORNEY GENERAL OF THE UNITED STATES

Mr. BARR. Thank you, Mr. Chairman.

The CHAIRMAN. Please introduce that fine family to us, those young women who are wondering why they have to sit there all this time?

Mr. BARR. Thank you, Mr. Chairman.

I would like to introduce my wife, Christine.

The CHAIRMAN. Welcome, Christine.

Mr. BARR. And my daughter Margaret, who we call, Meg; and Patricia, and Mary.

The CHAIRMAN. One thing is certain, you will never be able to deny any of them.

Welcome, ladies. As I tell most of the children of people who have to come here to go through this process, No. 1 it will be painless, although it will be boring; and No. 2 you are entitled to ask

your dad and your mom for something special for having to sit through this hearing and put on your best dresses.

So if you need any legal representation in that matter, I promise I would be willing to help and will not confirm your father until you get a commitment from him for something special.

Anyway, thank you, very much for coming, ladies.

First of all, it is a pleasure to have a nominee before us in this administration that did not graduate from Yale Law School. [Laughter.]

The CHAIRMAN. It is the first one in 100, I think, not that there is anything wrong with Yale Law School but we like to try other law schools occasionally, particularly George Washington University.

But I would like to invite you if you have a statement, General, to make the statement and then we will go to questions.

Mr. BARR. Thank you, Mr. Chairman.

It is a distinct privilege to appear before this committee this afternoon and I would like to thank you for moving so quickly on this nomination. I am honored that the President has selected me for the position of Attorney General. It is not a position that I pursued. I never thought I would be nominated to be Attorney General. In fact, I never thought I would serve as Deputy Attorney General. But the way circumstances have unfolded, I believe I am in a good position to provide leadership to the Department of Justice.

As you know, from my background, I am committed to public service, and I also revere the law. It is my life and my profession. And as Attorney General, I believe I can serve my fellow citizens by upholding the rule of law. The Attorney General has very special obligations, unique obligations. He holds in trust the fair and impartial administration of justice. It is the Attorney General's responsibility to enforce the law evenhandedly and with integrity.

The Attorney General must ensure that the administration of justice, the enforcement of the law is above and away from politics. Nothing could be more destructive of our system of government, of the rule of law, or the Department of Justice as an institution than any toleration of political interference with the enforcement of the law.

When I met with the President about this nomination, I observed that there were others who had greater stature, and he said that the most important thing, as far as he was concerned, was to have a Department of Justice that was run with professionalism and integrity. That has been his only charge to me, and I am accountable to him, I am accountable to you, and I am ultimately accountable to the American people for carrying out that charge.

I believe that the essence of leadership is ultimately service. I have been at the Department of Justice for almost 3 years. I have grown to love the institution and the dedicated men and women who serve in it. I am proud to be associated with them.

I want to serve the Department. I believe I can serve the rule of law and the Department of Justice by protecting and fostering the professionalism and the integrity of the Department of Justice as an institution. AG's come and go and so the character of the Department of Justice, as an ongoing institution, has much to do with the course and the fair administration of justice in this country,

and if you confirm me, I would like at the conclusion of my tenure to have it said that I upheld the law and that I left the Department of Justice a more effective, stronger, and a better institution.

Thank you.

The CHAIRMAN. Thank you, very much.

As you know, this BCCI matter is engulfing and touching, it seems everything in sight, from the United States to God knows how many other countries. But, although I have other questions later on, I want to begin with one to clear the air, if it is possible to clear it, and I hope it is.

That on November 11, last night, on NBC, the following news report was broadcast and I am quoting.

It says, "The BCCI banker, Nazir Chinoy"—I hope I am pronouncing that correctly—"now in Federal custody in Florida, facing drug money laundering charges. And Chinoy's lawyers say Federal prosecutors seem to want Chinoy's cooperation until Chinoy made a startling disclosure that BCCI had financed—was right in the middle of covert American arms shipments to Iran. If true, what this member of the BCCI's inner circle says, means that BCCI was deeply involved in the CIA's most secret operations, playing a much greater role than the CIA has yet admitted."

Then skipping four or five paragraphs, it concludes, the second to the last paragraph, it says, "But two top Justice Department sources say, under Thornburgh, and his designated successor, William Barr, agents, and prosecutors have been blocked and delayed again and again in going after BCCI."

Would you comment on that?

Mr. BARR. The Chinoy report, from last night, was the first I heard about this episode.

The CHAIRMAN. What do you mean by, this episode?

Mr. BARR. This discussion with Chinoy. He was an original indictee—this is what my understanding of the situation is, as far as I have been able to tell—Chinoy is a BCCI official. He was one of the original indictees in the first Tampa money laundering case.

We were not able to get custody of him, because he was fighting extradition. We worked for 2 years to get custody of Chinoy. Meanwhile, the first Tampa case was prosecuted for the defendants that we were able to get into custody.

When we finally got Chinoy in custody, we successfully extradited him. He is scheduled for trial on those original money laundering charges for January 1992. There were plea negotiations with his lawyer. I am told that in these plea negotiations he made a proffer to agents that the agents considered to be incomplete. I do not know the full content of this proffer but Chinoy and counsel were seeking a plea agreement.

And one of the elements they were asking for is something called a 5(k) motion, for a departure from the sentencing guidelines based solely on the proffer without any evaluation of subsequent performance and ultimate truthful cooperation in the future.

This is something that I am told we never do. It is akin to buying a pig in a poke to let someone off on a plea bargain, cut a sweetheart deal for someone based solely on a proffer, one that the professionals involved believed was incomplete.

At any one time, there are literally thousands of criminal defendants scheduled for trial on serious crimes. And, if every time one of them wafts the word "Iran" under our nose, and insists upon a sweetheart deal without any commitment of followthrough, we would not be in the criminal justice business. That is my understanding of the Chinoy episode.

The CHAIRMAN. Did you learn this from the news broadcast last night?

Mr. BARR. The first that the Chinoy thing ever came onto my radar scope was last night on the NBC report. Now, you have to understand there are about 5 to 6 linear feet of documents that come into my office every day.

The CHAIRMAN. I am not being critical, I just want to know when.

Mr. BARR. No, I am just saying, you know, it could be in some report somewhere. It could have been on a summary of events or developments that I never focused on. But the first it penetrated my consciousness was last night.

The CHAIRMAN. The reason I ask, and I do not doubt you for a moment, you have never been anything but truthful with me, it does, at least in my mind, raise a question of how top a priority the BCCI investigation is receiving under the Justice Department if this—unless it is not that significant an event in the minds of the Justice Department—that you, as Acting Attorney General, would not be aware of Chinoy's proffer.

Mr. BARR. It would be quite unusual for either the Deputy Attorney General or the Attorney General to be monitoring plea negotiations closely, even in a case of this magnitude. In fact, I think that if I responded to media pressure or political pressure to get the job done in BCCI, and reached down and interfered with the professional judgments early on in this kind of case, I think I would be legitimately criticized. The process in the Justice Department is for these things to move up step-by-step and if it requires a review or if it is escalated to my level then I can deal with it.

But I am not going to monitor plea negotiations that are going on across the country in any case. But this maybe gives me an opportunity to talk more broadly about BCCI which I would be glad to do if you would like to pursue it.

The CHAIRMAN. Sure, if you feel comfortable with it.

Mr. BARR. BCCI—I think I can look at it from a prospective and a retrospective standpoint, really using the summertime as the pivot point. I personally did not get involved in any appreciable way in BCCI until the summer when all the articles started appearing about alleged foot dragging by the Department. And at that point—

The CHAIRMAN. The summer of 1991?

Mr. BARR. Yes, just this past summer. And Dick Thornburgh at that point designated Bob Mueller, who is a career prosecutor, who is the head of the Criminal Division, to take charge and to coordinate this effort, and make sure that the job gets done in the future, and also to find out what has happened in the past.

The CHAIRMAN. Who was in charge up to that point?

Mr. BARR. There were separate investigations going with very little coordination in various districts.

Since that time, as Bob Mueller has written to——

The CHAIRMAN. Of course, you know that has been one of the criticisms.

Mr. BARR. Sure. I will get to the retrospective in a moment. But first looking from the time that I have been involved forward, as Bob Mueller said in his letter to Congressman Schumer, since that time he has received very clear, straightforward instructions: First, spare no resources, use whatever resources are necessary; two, pursue the investigation as aggressively as possible and follow the evidence anywhere and everywhere it leads; third, that there is going to be coordination and a consolidated effort; and, finally, that jurisdictional turf fights that impede this investigation are not going to be tolerated. And that has been the consistent direction he has received.

The investigation now is going forward in five different districts, U.S. Attorneys districts.

The CHAIRMAN. Are you now directing Mueller?

Mr. BARR. Yes. And in the District of Columbia, in addition to those five districts, we have a consolidated task force between the U.S. Attorney's Office here and the Criminal Division. That task force has three different teams. Two are conducting investigations; one is providing coordinating and other kinds of support to the overall investigation. In addition, we have the Office of International Affairs in the Criminal Division assisting all the offices with the international dimensions of this. We have right now 37 prosecutors nationwide and dozens of agents, obviously, supporting those prosecutors on this case.

As far as I am aware, all allegations that have surfaced are now being pursued aggressively. And starting from the time that I have been involved, I will accept personal responsibility for performance in this case, and I will be held accountable for it. And, Mr. Chairman, if you want to hold hearings in several months, or whatever timeframe, to determine what progress has been made, I would welcome that. But I will take personal responsibility for the performance of the Justice Department on this investigation.

But I want to make something clear, and that is that this is a complex case. We have a standard at the Department of Justice, an indictment standard. We believe we need to have evidence sufficient to support an indictment, in hand, so that we can prove our case in court. A lot has been said about not wanting to have a political Justice Department. And I agree with that. There are a lot of different ways politics can come into play in a case. On the one hand—and I think many of you are thinking of this—you shouldn't sweep anything under the rug. Don't cut anyone a special break. Don't show favoritism. Don't withhold an indictment that should be laid down because of political influence.

But there is another side to the coin, and that is don't hand down an indictment because of political pressure. Don't lower the standard of indictment just because it is politically convenient. That standard, if I become Attorney General, is going to be one standard, and it is not going to be changed for anybody in this country. And I don't care how much political pressure is brought to bear. I don't care what the op eds say. I don't care what the journalists say, or if it is not fast enough for them. And I don't care

what the political pressures are. That standard is staying where it is.

Right now the career prosecutors in the Department—and, believe me, I have been pressing them—have explained to me very coherently what evidence is lacking that prevents us from laying down an indictment today. I have insisted on explanations, and I have gotten them, and they are coherent, and I think they are right. And they are coming from the career professional prosecutors.

And nothing—you know, from a personal standpoint, it would be great if I could just throw an indictment on the table and say, "See, guys." But I am not going to do that. Until that standard is met, there is not going to be an indictment in the BCCI case. As it is met, there will be indictments. So that is talking prospectively.

Let me just say, we have to support the indictments with evidence. That means people and documents, and most of this activity occurred overseas. And it was carefully carried out to avoid regulatory scrutiny.

Much of this activity was conducted in countries where there are bank secrecy laws. It is very difficult for us to get access to the records and people we need, but we are working to do that.

I am not going to take the Price Waterhouse Report, staple an indictment to it, and throw it into the bin. We are going to get the evidence before any indictment comes down.

Now, looking retrospectively, I have asked that a thorough review of pre-July activity be conducted.

The CHAIRMAN. Before you do that—I apologize for interrupting—there will be two other things that will be raised, and I just want to raise them now so you can throw them in the bin.

It is my understanding—and I do not know this for a fact—that your former law firm, Shaw and Pittman, now represents the president of BCCI. Is that true, to the best of your knowledge?

Mr. BARR. I learned yesterday that they are representing Naqvi.

The CHAIRMAN. Naqvi. And what is his position?

Mr. BARR. I think he is one of the very senior people.

The CHAIRMAN. Now, was there any work done by that law firm when you were with the law firm as a partner or as an associate with regard to BCCI?

Mr. BARR. Let me make it clear. This is my understanding. The law firm, I am told, represented people, one of whom was Frank Saul, who owned Financial General back in 1978 when it was being purchased by others and apparently it says in the paper that Frank Saul suggested that this was a move by BCCI to take control. That was the first year I was at the firm. I was an associate. I don't believe I had any contact with that matter. As I say, the firm was representing a person who was a shareholder and whose interest was ultimately bought out.

My understanding is that Naqvi became a client of the firm well after I left, and I have been gone for almost 3 years.

The CHAIRMAN. Well after you left as a partner?

Mr. BARR. Yes.

The CHAIRMAN. Let me make—

Mr. BARR. I left the—

The CHAIRMAN. You were there as an associate in the early 1970's?

Mr. BARR. I will give you the chronology. I was at the law firm from 1978 to 1982 as an associate. I then returned to the firm from the White House and was there from 1983 to 1984 as an associate, made partner, and was at the firm as a partner from 1985 to 1989 when I came into the administration as the head of OLC. So I have been away from the firm for almost 3 years.

The CHAIRMAN. So when you say you left the firm, in your last statement you said when you left the firm, you are referring to 1989.

Mr. BARR. 1989, yes.

The CHAIRMAN. When you left as a partner.

Mr. BARR. Yes. My understanding is Naqvi has become a recent client of one of the partners there.

The CHAIRMAN. To the best of your—

Mr. BARR. Let me just say, I have no financial interest in the firm. I liquidated that completely when I left in 1989. I have no arrangements with the firm.

The CHAIRMAN. When you were at the firm as a partner, not as an associate—the period when you were a partner, 1985 to 1989—you, I assume, would have more access to information relative to what the firm was doing than when you were an associate. Can you tell us whether or not the firm at the time you were there as a partner, from 1985 to 1989, in that timeframe, whether or not they were representing BCCI or any of the principals in BCCI?

Mr. BARR. Not to my knowledge.

The CHAIRMAN. Not to your knowledge. That is good enough for me.

Now, I will come back with some other questions. My time is up, but you can—

Mr. BARR. Let me just say that the firm has some international bank clients. I was never involved in that practice, and I never became aware of the firm representing BCCI.

The CHAIRMAN. For the record, how big is the firm?

Mr. BARR. Right now it is 240 or 250 lawyers.

The CHAIRMAN. And how many partners, roughly?

Mr. BARR. Probably around 70 or 80.

The CHAIRMAN. If you would like to—I am not asking you to. If you want to finish your answer with regard to BCCI, not prospectively, but as you started, or if you want to wait until later, it is up to you. Otherwise, I will yield to my colleague, Senator Thurmond. I don't want to cut you off. I just wanted to get that in so it didn't linger.

Mr. BARR. Maybe we can—I was going to give an overview of what has happened in the past and largely defend the Department's record. But I will hold off on that until someone else raises the BCCI issue.

Senator SIMON. I think it would be helpful, as long as you are having this, to get that retrospective look right now.

Mr. BARR. OK. I have asked for a retrospective look. I think it is important that if there were mistakes made, that we can learn from our mistakes and make sure these kinds of slip-ups don't happen again. So that is one reason. And the other reason is be-

cause there is, lurking in the background, some suggestion that somehow there is some wrongdoing or mischief involved. And, to the extent there are any allegations like that, I want those all pursued and run to ground.

Let me also say that I am frankly not immersing myself in all the details of what happened prior to July. I have people working on that. I learn a little as it goes on. But my priority is what happens from now on and making sure the job is done.

But from what I do know, I think the record is fairly good, and I think much of the criticism is unfair. The major criticism is that the Department didn't act quickly enough.

There are basically four categories of offenses that BCCI is alleged to have committed that touch upon the United States. First is money laundering. Second is regulatory offenses, the secret acquisition of financial institutions in the United States. The third is a widescale fraud, a ponzi scheme where depositors' money was taken worldwide. And the fourth is general allegations about public corruption, that there is somehow a list somewhere of bribes being paid to public officials.

Starting with money laundering, most of the money laundering allegations centered on Florida which was the major area of drug activity and money laundering. And the Department of Justice has prosecuted a major money-laundering case against BCCI, the only one so far brought to fruition. It was a Customs Department undercover investigation. It was a complex investigation. Ultimately we were able to prosecute five, I think, of the BCCI officials, and we also had a plea agreement with the bank where we got the largest payout forfeiture in history of financial institutions.

Then there has been a second phase of this, a follow-up in Tampa, where, in September 1991, we brought a follow-on indictment against other individuals.

The money laundering, by and large, the big picture is that the money-laundering allegations were detected and have been prosecuted. Now, there is an allegation in the Washington Post—I believe it is on the Washington Post editorial page today—that there were 125 DEA cases relating to BCCI in DEA's files and that somehow we didn't get the picture and didn't focus on these 125 cases. I am informed that the 125 figure is the number of current reports in the DEA files, most of which relate to the investigation and the activity that was carried on from 1986 through 1990 in that money-laundering case.

The second area of allegations are the regulatory offenses. As I said, that is the notion that there were secret acquisitions of financial institutions. The basic allegation is that while the law enforcement people, both Justice and Treasury—because there were two Treasury agencies involved, Customs and IRS—while they were covering the money-laundering part of the case, they acquired some evidence about the alleged secret acquisition of First American and that they never passed that on and that somehow that slowed down the investigation.

I think—again, I am talking here about the big picture and my preliminary assessment, because I haven't immersed myself in all of the facts. But the general pattern, it seems to me, was that this evidence was passed along to the Fed. Maybe not as promptly and

tidily as it should have been, but basically the information was transmitted to the Fed after the takedown of the undercover operation. And the evidence that was transmitted to the Fed, which had primary jurisdiction here—these were regulatory violations, and the Fed in the first instance is the regulatory agency that should be investigating—was of limited utility to the Fed because it was sort of general in nature, hearsay, gossip, and the Fed was really focusing on trying to get more tangible evidence.

And my understanding of the Fed's position is that it was the Price Waterhouse study that came out in December 1990, that was the big breakthrough for the Fed. Now, remember, the Fed has a lower standard of proof. They are operating in a civil environment, not a criminal environment. So it was in December 1990, that the big piece of evidence as far as the Fed was concerned on the regulatory offenses, came out of the United Kingdom.

My general sense is that the hearsay and the gossip and the rumor and the general corporate knowledge kind of evidence that was transmitted to the Fed from the money-laundering investigations, I think it was sheer speculation and quite unlikely that that would have materially advanced the Fed's ultimate investigation.

In any event, the Fed did refer the regulatory case to us in January of this year. So the process has worked. The Fed as the regulatory agency has made a criminal referral that came to the Department in January 1991, and the Department is pursuing those regulatory offenses, potential offenses. But as I say, the issue for us is getting the evidence from overseas.

I think that the allegations of the ponzi scheme, the worldwide fraud, likewise arose after the Price Waterhouse report, and the allegations of corruption are of relatively recent vintage and of quite a general nature. And those are now being pursued, and those issues arose in 1991.

I have already discussed the fact that it is very hard for us, a tedious process, to gain the evidence that we need as a predicate for an indictment. And I think it is unfair generally to be conducting an autopsy on a live body. This is an investigation in mid-stream. And ordinarily the Department of Justice is not, and should not, be driven by a political timetable. I don't know why the people feel we should be handing down indictments immediately here. We will hand down indictments when the evidence is there to support it.

There is a saying—I think all of us know it—that the wheels of justice grind slowly, but exceedingly fine, and most people appreciate that because we have to go through a process. And the reason we are ultimately able to do justice and get that fine grinding at the end, where all the allegations are handled in a coherent way, is because we go through a process.

No one at the CIA, the State Department, or the White House or anybody outside the Department of Justice, as far as I am aware, has ever attempted to influence the course of this case, and no political influence whatsoever has been brought to bear on this investigation.

The CHAIRMAN. Have you been asked to update the White House on the state of the investigation of BCCI?

Mr. BARR. When?

The CHAIRMAN. Since you have taken over primary responsibility for it?

Mr. BARR. There were two instances where—there are only two communications that I am aware of with the White House on the BCCI case, on the investigation. One was a lunch I was having with Boyden Gray, we were going over a number of issues that were going to be coming up in the fall and discussing that the department would be having a transition at that point, and I said that the BCCI matter was, you know, an important priority area, and he asked me to explain all the adverse press that the department had been getting over the summer.

The only other instance I am aware of is where we, basically following up on that, went to brief the counsel's office—I did not do it, someone else did—on the allegations that had been made in the progress of the investigation. But no one in the White House has ever attempted to influence this in any way.

The CHAIRMAN. Senator Thurmond.

Senator THURMOND. Thank you, Mr. Chairman.

Mr. Barr, when a person is elevated into a new position, they generally set up goals. What are your goals during your tenure as Attorney General?

Mr. BARR. I think talking about specific goals and priorities, and I think I have said this to a number of you on courtesy calls, is a little bit misleading in the Department of Justice, because we are called upon to administer the law across the board and make sure that all programs and all areas of enforcement are covered. And, as Senator Kennedy said, it is a very difficult job to do in a period of scarce resources.

In a way, I hate to suggest that by giving emphasis to one program we may be giving short shrift to another. I do not mean to suggest that, and so one of my priorities is to try the best I can to cover the whole waterfront, so that at the end of my tenure it cannot be said of me that I let the ball drop in a particular area. That is an important priority, I think, for any Attorney General to have. It does not necessarily get headlines, but that is the business of the Department of Justice.

The second priority, before getting into specific areas of emphasis, is also sort of cross-cutting nature, and that is something I said in my opening statement, which is to try to foster and build upon the professionalism and the integrity of the institution itself, so that when I leave, people will say that it is a better institution, it is a more professional institution. And, I think that the way I can do that as Attorney General, is both by personal example, by being professional in my decisions and my dealings, and also by insisting on professionalism from top to bottom in the work that is done in the department.

Beyond that, there are several areas of emphasis. Obviously, drugs has to continue as a top priority. In my view, it is a long-term struggle. We are talking here about the cold war. We are not talking about Desert Storm. This problem took decades to come about, and it is going to take decades to cure. But part of my responsibility and my priority will be to keep the pressure on, so we continue to make progress.

Beyond that, I want to give increasing emphasis to the problem of violent crime. Violent crime is intolerable in the United States, and while it is largely a local concern, 95 percent of it or more is really under State and local jurisdiction, and should be, I do think there are some areas where the Federal Government can provide greater support and make a real difference in fighting violent crime. Later on, I will be glad to discuss the details of what I am talking about.

Next, I would say that civil rights would be one of my areas of emphasis. I think there is a broad area of agreement; sometimes we focus on areas of policy disagreement, but there is even a broader area of agreement in the civil rights area, and that is that discrimination is abhorrent and strikes at the very nature and fiber of what this country stands for.

I believe that, although progress has been made in this country, that there is still discrimination in this country, and enforcing the civil rights laws would be a high priority of mine. I intend to be vigilant in watching for discrimination, and I intend to be aggressive in rooting it out and enforcing the laws against it wherever it is detected.

The first experience I had with this, as Acting Attorney General, was in the area of fair housing, that Senator Hatch alluded to. Shortly after I took the position of Acting Attorney General, I saw that a report came out of HUD about discrimination in housing, followed by a report from the Fed concerning discrimination in mortgages. I recognize there has been a lot of talk about how that data has to be massaged and sifted and studied and analyzed, but, in the meantime, I told John Dunne that that did not mean we should sit on our haunches, and I asked him to put together a stepped-up enforcement program.

He talked about Senator Hatch's bill, to start using testers, and I thought that was a good idea, but I concluded that we did not really need new legislation to do it. I asked that we reprogram \$1.4 million into the program over 2 years, and that we embark on a testers program. This would be the first time the Department of Justice has used testers directly. We have relied on evidence from testers before, but now they will be working for us directly.

Also, I asked John to set up a group of regulatory agencies that are involved in the mortgage area, so that we can have a coordinated enforcement program, and I believe that group is meeting and setting out an enforcement program in the mortgage area. So, I intend to be proactive and, as I said, civil rights will be a priority.

Finally, I would say white collar crime, and there the challenge is to keep up the momentum in the areas where we have been making progress. I think we have been making a lot of progress on financial institution fraud, in large part because of the infusion of resources we got in the Crime Control Act of 1990, and we have been making progress in government contracting and in HUD fraud and in affirmative civil litigation.

But the other part of the white collar challenge is to anticipate the slumbering giants before they become problems like the S&L problem, and try to get ahead of the power curve, get the resources in place and get the program in place.

I have been chairing the Economic Crime Council, where we have designated areas of insurance fraud, pension fraud, computer crime and health care fraud as new areas of emphasis and we are starting to put in place a program to deal with them. But as Senator Kennedy said, while these are priorities, and while I will be trying to give them emphasis, we are in an area of very scarce resources.

The President has asked for a 60 percent increase in the Department, budgeted over 3 years. This past increase for the 1992 fiscal year was almost 15 percent. I have to say that the Senate, in their appropriations, basically gave the President what he wanted for the Justice Department, but, unfortunately, in conference committee we lost \$472 million. That is a tremendous blow to the department. It means a lot of the initiatives we were hoping to carry out cannot be carried out.

So, another cross-cutting priority of the department, of any Attorney General, is increasingly the role that the Attorney General has to play as a manager, to make sure that we are effectively investing the money and the resources.

So, Senator, those are my goals as Attorney General.

Senator THURMOND. What steps are being taken to fill the existing judicial vacancies? About 2 weeks ago, I checked and we had approximately 125 vacancies. It seems to me that some part of the process is taking too long. Is the slowdown at the White House or at the Justice Department?

Mr. BARR. Well, it is a long process, Senator. I think we had a total of 150 vacancies, and my figures show that we have 41 nominations pending, we have tentatively selected 66 candidates who are now undergoing either FBI background checks or ABA reviews, and we are in the process of interviewing for 18 additional judgeships, and we have not received recommendations on 25.

Now, I agree that it is a slow process, but it is an important one. We did have a big backlog, because of this creation of the new judgeships, and it is a long process, because we have to make sure that we are putting people who have the proper character and integrity and competence on the bench, and that requires the FBI background check, it requires the ABA screening process, and that takes a lot of time.

But I think the big picture is that we have 41 nominations pending and 66 already in the pipeline, with only 18 interviewing and 25 with no action on them yet, and that is not too bad a position to be in. But I agree with you, we have to do better, and it may require putting more FBI resources into it.

Senator THURMOND. Would it be possible to employ more FBI agents to get the background checks completed? I get complaints all the time about filling these vacancies. The judges are complaining, they say they are overworked, and that they cannot get the job done under the current circumstances. We created the vacancies and now they are not being filled in a timely manner. Can you not employ about 50 extra FBI agents to get the necessary work done quickly?

Mr. BARR. I do not know if I can employ them, but, obviously, we can shift FBI agents from other areas to do the backgrounds. But this is a pipeline we are talking about. It has a number of different

points along the line, and even if we were to push through these 66 we have going through the process now, either background or ABA, this committee also has limitations on its capacity to process these people quickly.

I am not suggesting there has been delay at all. I am just saying that right now there are 41 pending. We are just about——

Senator THURMOND. Where is Senator Biden? I wanted him to hear that. [Laughter.]

Mr. BARR. We have 66 more coming down the pike. I think this background——

Senator THURMOND. In some cases it has taken 2 or 3 months for the FBI to complete its investigation. It has taken several months for the ABA to complete its investigation and evaluation. I think that is ridiculous, to be frank with you.

Mr. BARR. Well, I think we have to expedite those investigations and get more nominations up to the committee, but the committee also has to investigate these individuals.

Senator THURMOND. These positions ought to be filled expeditiously. Now, if it is the Justice Department's fault or the White House, they ought to correct it. If it is the fault of this committee, it ought to be corrected. These positions should be filled.

Now, I am sure you realize the importance of a good working relationship with the Congress. How would you hope to accomplish that?

Mr. BARR. I think that I have been able to establish a good working relationship with the Congress, both on the Senate side and the House side. I have been willing to work closely with committees and with individual members to accomplish legislative objectives.

I played a role in getting the Debt Collection Act through and, as Senator Simon mentioned, came up and spent an all-nighter here on the Crime Control Act. I worked closely with Senator Biden on this year's crime bill, which passed the Senate. I think the key to it is mutual respect and open communication.

Senator THURMOND. Do you feel there are sufficient resources at both the State and Federal levels to effectively fight organized and white collar crime, and would you hesitate to ask for more funds, if you need them?

Mr. BARR. Well, as Dick Thornburgh said, we could always use more resources in law enforcement. We only spend a little over 1 percent of our budget on law enforcement in this country at the Federal level and I think 3 percent on the State level. My impression is that any law enforcement officer in the country, State or Federal, can always use more, so it is a question of prioritizing and doing the best you can with limited resources.

On the organized crime front, I think we have a good program in place. We have recently changed our strategy, as you know. Whereas, before we were focusing exclusively on the La Cosa Nostra and certain other organized crime entities, we have now expanded the definition of organized crime so that we could go after other groups, emerging groups, and not just traditional organized crime groups, and we are deploying those resources now.

On the State level, that is really a matter for the State and local authorities to determine how much is enough resources. I myself

would not like to see a scaling back of what is being invested in law enforcement on the local and State level.

Senator THURMOND. The Office of Professional Responsibility has made fine contributions. I presume you expect to continue to provide support for that office?

Mr. BARR. Yes, I do support the Office of Professional Responsibility. As you know, we have a new IG that was created, and there has been some issue as to the respective jurisdiction of the IG and the Office of Professional Responsibility.

On the one hand, I think part of the statute suggests, or maybe it is the legislative history, that the Attorney General may consider subsuming OPR in the IG's office, merging the two. On the other hand, I believe there is also language, either in the statute or legislative history, suggesting that consideration might be given to shifting investigative slots from the IG to OPR, basically creating a larger, far bigger organization of OPR, while at the same time having the IG.

Those offices have given me their views on the allocation of responsibility, and I decided when I became Deputy to basically get a year more of experience under our belt with these two offices in operation, before making any decisions, because I wanted to see where the pressure points were and how the relationships were and what roles they were playing.

While I have not come to a final conclusion about all the details, I think that we should continue to have OPR as a separate entity, enforcing particularly the professional responsibility of the lawyers in the Department and assisting the Attorney General in insuring the highest standards in the department.

Senator THURMOND. I believe my time is up. Thank you very much.

Senator KENNEDY [presiding]. Thank you very much, Mr. Chairman.

I want to say that it is difficult to differ with your orders of priority. I think the order that you represent certainly expresses my own kind of priorities in the Justice Department and I think you pointed out whether you are going to be able to—and the new initiatives I think you ought to be commended for.

The fact of the matter is there has been more action over in HUD than there has in the Justice Department in recent times in the areas of enforcement of civil rights, and as I understand, even though it is in a preliminary stage, what you are attempting to do there I think is noteworthy and commendable.

Let me go into some other areas that have not been touched. One of them has been mentioned, but I would like to, if I could, direct your attention to the Brady waiting period for handguns. The Brady handgun waiting period is an important proposal. Your predecessors supported it, on the condition that it be included as part of a comprehensive crime package, including habeas corpus, death penalty and other reforms.

The proliferation of assault weapons, though, continues to be a problem for law enforcement and every law-abiding citizen. The success of waiting periods and background checks at the State level is compelling; they provide a cooling off period, and the only opportunity to determine whether a prospective firearm purchaser is not

entitled to make that purchase is because of a criminal record or history of mental illness or other disqualifying factor.

Now, the Brady waiting period the administration is willing to accept as part of the crime package applies only to handguns. Assault weapons, obviously, are at least as lethal, and why shouldn't we expand the scope of the Brady bill to encompass assault weapons, as well?

Mr. BARR. On the assault weapon front, the proposal before us is the DeConcini amendment. I think—I don't know if this is a new statement or not, but I would support both the Brady bill waiting period and the DeConcini amendment, provided they were parts of a broader and more comprehensive crime bill that included tough enforcement provisions, including very tough provisions on the use of firearms in crimes and illegal purchase and trading in firearms, which are part of the package that passed the Senate.

Now, to be candid, on the waiting period, I would prefer an approach that was directed toward point of sale, and I know that we are not at that point yet technologically. It is going to require more investment, and I have been involved in infusing those resources to upgrade the records. But the important thing, I think, ultimately, will be a system that is based on State records, a State system. And so I think the House approach is preferable, frankly, to the Senate approach.

On the DeConcini amendment, I would prefer a limitation on the clip size, but ultimately I would recommend the President sign a bill that had the Brady waiting period and a DeConcini assault weapons provision in it, as long as we had other tough crime measures in it that dealt with the other problems.

I have not considered before whether the waiting period should apply to assault weapons and would want to think about that, but off the top of my head, I don't think there should be an objection to that.

Senator KENNEDY. Well, as you know, DeConcini on the assault weapons does not provide for the waiting period for the assault weapons. And although it includes a number—I believe it is 11 sets of assault weapons, there are clearly others that result in the same kind of destruction and havoc and threat to law enforcement personnel.

I think the fact that you are forthcoming in terms of the waiting period for assault weapons is very constructive. We have—

The CHAIRMAN. And unusual for an Attorney General nominee.

Senator KENNEDY. We have here just the application for the purchase of weapons, and as you are familiar, prior to 1968, they didn't even ask the six or seven questions, which are probably the most rudimentary questions that there are. Of course, without having the opportunity to give local law enforcement the opportunity to check those, the significance and importance of them are significantly compromised. And it has been to try and give that period of time to local law enforcement that the waiting period has been supported, and there have been some important successes. In New Jersey over a period of time some ten thousand convicted felons trying to buy guns have been identified. I am not going to take the time of the committee to go through those.

But the fact that you would be willing to consider seems to me to be logical. If it is important in terms of dealing with violence on the hand guns and on the kinds of weapons that have been used that have brought such destruction and violence to our fellow citizens, would certainly be justified as well, and that are threatening many of those in the law enforcement community.

Just let me ask you on one other related area, and that is on reviewing the licensing requirements for the sale of assault weapons, as you probably know, and I won't go through in great detail. But it is virtually four or five of the same kinds of questions, and you can get a license to sell these assault weapons and sell them to virtually anyone. And it seems to me that if it is good enough in terms of the purchase of the hand guns, in terms of checking out the background, and good enough in terms of trying to deal with the assault weapons, having some kind of idea about who is going to be selling these, who is going to be the licensee, given some of the recent information about who is selling assault weapons is worthwhile, as well.

Would you be at least willing to visit and talk about that particular issue and see what suggestions you might have on that?

Mr. BARR. Sure, Senator. I am always willing to consider that. In considering restrictions on the lawful sale of guns, I do start out with the threshold considerations that the most effective way ultimately of dealing with violent crime is to deal with violent criminals, and that anything that focuses exclusively on lawful sale is somewhat of a feckless exercise. But as part of a comprehensive approach, I think it is legitimate to take a look at reasonable steps, recognizing that there is a tradition of private gun ownership in this country and a legitimate interest in that, but nevertheless looking at reasonable steps as part of a broader approach to controlling the deadly use of firearms that is becoming an increasing part of the plague of violence, the crime that we have in our streets.

Senator KENNEDY. I liked your earlier answer better, but I am glad to hear this one, too. [Laughter.]

I would say to my good friend from South Carolina, if you need any recommendations on those vacancies up in Massachusetts, to fill those, I would be glad to help.

Let me go to another area, and that is the area that we talked about at the time that we had our visit, which I very much appreciated. That is with regard to the Wichita Operation Rescue case and the decision to file a brief in the Wichita Operation Rescue case, the *Women's Health Care Services v. Operation Rescue*. As we understand, historically the Federal Government has protected the individual rights, and when protesters attempted to prevent the black Americans from attending newly integrated schools by blocking the students' access, the Federal Government stepped in to ensure the students' safe entry. That was done at a time when there were many that really, out of a sincere belief, believed that the law was wrong during that time. It wasn't really a question whether they believed it was right or wrong. Still, the Justice Department acted.

But in this case, the U.S. Justice Department reached out to the district court in Kansas and entered the dispute on the side of the

lawbreakers. It weighed in with those who would forcibly deny a woman a Federal constitutional right to abortion. And it, as far as I am concerned, poured gasoline on an already volatile situation by making it appear that the Government supported the clearly unlawful acts of Operation Rescue.

The Government had already stated its position in a brief before the Supreme Court, defended in both cases the same entity, Operation Rescue, was even represented by the same attorney so there is no reason to believe the judge in Kansas would not be appraised of the pending Supreme Court case.

Why did the Government feel it necessary to sort of fan the flames in Wichita and to argue that Operation Rescue should be free from the Court's order prohibiting its illegal activities?

Mr. BARR. Well, thank you, Senator. This gives me the opportunity to describe what happened because I think it has been mischaracterized, largely, and people drew the wrong conclusions from the way it was publicly presented.

In describing it, I would like to emphasize three points. First, this was not viewed as an abortion issue in the Department. It was viewed as an issue of jurisdiction and the reach of the so-called Ku Klux Klan Act of 1871.

Second is that the Department did not side with the demonstrators. On the contrary, we condemn those who break the law and who violate other people's legal rights.

Third, this was not a gratuitous action by the Department where we reached out and tried to stir up an issue. On the contrary, we felt that circumstances came about that really drew us into it, and we tried in good faith to deal with it in a lawful way as we understood it.

The first point that I think bears emphasis is that Operation Rescue demonstrators who block abortion clinics are lawbreakers. They are treading on other people's legal rights. I do not support or endorse or sympathize with those tactics. As the President said, everybody has an obligation to obey the law, and as a Government official, my responsibility is to enforce the law and to protect people's rights.

The issue in Wichita was not whether those demonstrators should be dealt with. The issue in Wichita was which statute should be used to deal with them, which law enforcement agency should be used, and what court system should be used to deal with the demonstrators. And we believe that the applicable statutes were local and that the local police should be the law enforcement agency and that the local courts could deal with it. And this has been—in fact, in city after city around the country, that is how it has been handled—locally.

In Wichita, there was an attempt to federalize the issue. The clinics went to Federal court claiming that there was a violation of the Ku Klux Klan Act and seeking the intervention of Federal marshals to enforce their rights of access. Now, before Wichita, I learned at the time—I hadn't really focused on it before until the Wichita matter came up to me—but before Wichita, as you mentioned, this same effort had been made to federalize this issue, and that was in the Washington, DC, area. And that had been litigated up to the Supreme Court, and 3 to 4 months before Wichita, the

Department had filed a brief in the *Bray* case in the Supreme Court, saying that the Ku Klux Klan Act did not give Federal jurisdiction in these kinds of matters, that it required a class-based animus, certainly racial and possibly sexual class-based animus. But that was the limit of the jurisdiction under the Ku Klux Klan Act. So that was a position we had already taken by the time Wichita arose.

We had the additional situation where the district court judge in Wichita bought into the Ku Klux Klan Act theory. He issued a very broad injunction, sweeping injunction that had very stiff—as a condition of demonstrating, imposed a—I have forgotten what the term is now. But, anyway, the demonstrators had to pay in substantial moneys as a condition of demonstrating.

That concerned us, and then the order itself, the injunction itself, had very detailed instructions to the marshals about how to enforce the order.

The judge started holding press conferences and made statements—at least they were reported to me—about filling the jails, statements hostile to the elected officials, and also indicating that the Department of Justice fully supported his position. A number of components expressed concern about this state of affairs, and we had wide consultations within the Department, and it was decided that the best way to proceed, since we had already taken the position that the marshals did not have the jurisdiction to go in and do the things that they were now being told to do by the district court judge, was have the marshals obey the judge, have them obey the law, and call on everyone to obey the law, and then file an amicus with the court where we submitted the *Bray* brief—not rearguing the matter, just giving the judge a copy of the *Bray* brief to make it clear what our legal position was, but at the same time telling everyone to follow the judge's order.

I think for a period of time it helped defuse the situation out there and focus the attention on the courts and the legal process where it should be, rather than on the streets. But several days after that action, it appeared to me that other elements in Operation Rescue rekindled it and violated the law. They were arrested by—most of the arrests were by local police, but the marshals also made arrests. And I believe a number of them are being prosecuted for interfering with U.S. marshals.

But it was a legal question about the jurisdiction of the Ku Klux Klan Act, as I said, and we felt it was the proper thing to do, given the earlier position we had taken.

Senator KENNEDY. I am wondering if I could just finish. This is a very helpful statement and a good one.

The CHAIRMAN. Sure.

Senator KENNEDY. Just a final couple of points on this, if I could inquire, Mr. Chairman.

Do I understand you are saying that you think the Federal courts should not have jurisdiction to prevent interference with a woman exercising her constitutional right to choose abortion?

Mr. BARR. I was saying that the Ku Klux Klan Act doesn't provide that jurisdiction. I wasn't taking a policy position.

Senator KENNEDY. Well, you are aware that three Federal Courts of Appeals have decided this issue—the Second, Third, and Fourth

Circuits—as well as at least 12 Federal District Courts have held that section 1985-3 can be used to prevent groups like Operation Rescue from blockading clinics. The rulings have been based on interference with the right to travel. Only three District Courts, no Courts of Appeals, have taken views espoused by the Justice Department, which would deny women seeking abortions protection from these law-breakers.

I mean, effectively you are saying on the one hand they have a constitutional right, but you are leaving it up to the local law enforcement. And even in this case, you advocated that they lift the injunction against those that had been interfering with the clinic, and even in the face of the attorney that said, even if they don't lift it, I am not going to urge that they not continue their interference and their activities. And we are trying to find out what really the distinction is between the Justice Department that was prepared to go the extra mile on the basis of race over a period of 30 years to guarantee a constitutional right, and not prepared, evidently, to give the assurance of the protection and the safety to an individual here that is trying to pursue a constitutional right.

Mr. BARR. I think the issue for us as a matter of law was whether the Ku Klux Klan Act of 1871 was intended to provide that basis. I was not taking a position on whether the Government should or should not do that. Let me give you an example, and I do not mean to equate the two or analogize here, but I went to Columbia University during the riots in the late 1960's. People interfered, private citizens interfered with my constitutional rights, and I am not saying this is an analogous situation completely, but people blocked me from getting into the library, I know how it feels to be blocked when you are going about your lawful rights and it is quite offensive.

But even though I was being blocked in the exercise of my constitutional rights, I was being blocked not by the State, but by private people. And my remedy there was to go to State courts and get the city police to get them out of my way, which is what ultimately happened.

Now, with the Ku Klux Klan Act, the Federal Government has been given a role to play in certain circumstances where private parties combine to interfere with constitutional rights, but that is an exception to the rule. And the issue was whether that statute, passed in 1871, was designed to give the Federal Government that kind of a role in the matter of abortion and when this issue came to me the Department had already taken an issue on the position.

Senator KENNEDY. Well, I would just cease and hope you give responses.

I understand the 1985 Act prohibits a conspiracy to deprive a person, a class of persons from equal protection or equal privileges. Operation Rescue blockades are aimed at preventing pregnant women from obtaining abortions. Now, Congress said in the Pregnancy Discrimination Act, and that passed 75-to-11, that discrimination based on pregnancy is a sex discrimination under title VII.

So the Justice Department action in Wichita abandoned its traditional role of advocating the protection of civil rights under title VII. If we said that it is under title VII, with the Pregnancy Discrimination Act, falls within that, it would appear to me that there

are those kinds of requirements for the protection of individuals. I do not know whether you have any kind of comment, my time is gone.

Mr. BARR. I would want to have, you know, I would want to see that issue briefed before reaching a conclusion, but off the top of my head, my feeling there is if the class that is being invidiously discriminated against are pregnant women then title VII might apply, but that is not what was happening here. These people were not invidiously discriminating or demonstrating against all pregnant women. They were against abortion, both the patients and the people performing the abortion, that was the activity they were demonstrating against.

But I would want to have that issue fully briefed before I reached any conclusions on it.

Senator KENNEDY. Thank you, Mr. Chairman.

The CHAIRMAN. Let me ask the nominee as well as the committee a scheduling issue here. This was noticed for continuing tomorrow as well. I have no intention of ending now. We are going to go for a while longer, but it is my inclination, but I would be interested in my colleagues input that we finish today about 5:30. And that would get us so that we have at least two more of our colleagues, excuse me, three to four more of our colleagues be able to ask questions and then begin tomorrow at 10 o'clock.

Things are going fairly smoothly, I think we can just keep going along at that pace, if that is all right with the committee. Is that appropriate?

Well, then why do we not give you a chance to stretch your legs, a five-minute break right now, and then we will continue.

[Recess.]

The CHAIRMAN. The hearing will come to order.

Senator GRASSLEY. And before you begin, Senator, I am told that there is going to be a vote around 5:15 and so hopefully we can get three or four more of our colleagues in before we break for that vote, if that is possible.

I have not been following, but what has been our time allotment? I forget.

The CHAIRMAN. Technically it has been 15 minutes, and in almost every case it has gone longer.

Senator GRASSLEY. OK, well, I probably will not use more than 15 minutes.

Mr. Barr, as you probably remember and I am sure that we have talked privately at other times when you have been around my office, of my interest in the False Claims Act of 1986. I was involved with the writing of that act, and as everybody knows that act was passed to give incentives for individuals who know about fraudulent use of taxpayer's money, the ability to take cases to the court and get a judgment or get a portion of what the Treasury would find in a favorable judgment.

For the False Claims Act to work it is very important that the Justice Department not fight efforts by private qui tam relators to pursue claims on behalf of the Treasury. Sometimes I have had cause for concern whether or not there has been a real commitment on the part of DOJ to prosecute in qui tam suits.

My question to you is not accusatory or anything, but could I count on you to ensure Justice Department's cooperation with qui tam relators and to continue what I thought was Dick Thornburgh's commitment to the Department prosecuting Government fraud?

Mr. BARR. Well, absolutely, we are strongly committed to prosecuting fraud against the Government. On the qui tam provisions we are, as you know, your statute has spawned substantial qui tam practice. I think there have been 370 cases filed since that act. We have entered 59 of them. And qui tam has—you cannot quarrel with success—it has been successful in leading to substantial recoveries for the United States. I believe we have recovered so far about \$134 million.

We are monitoring the qui tam regime carefully. And as far as I am aware, there are basically two areas of concern. I know you are familiar with our concern over Government employees using information that they have gotten while employed and then going out and bringing a qui tam action so that they get part of the take. And I think we are working with you on seeing how we can fine tune the statute to address that issue, and I would like to continue to work on that effort.

The second area of concern is the extent to which a qui tam case, over which we do not have any control or limited control, might work at cross purposes with a criminal investigation and those are some of the areas where there is sometimes some tension. Where we are pursuing a criminal investigation, if this was completely a Justice Department show we would go criminal first, and civil second. And sometimes if there is a qui tam suit out there it is a little hard to coordinate with our criminal investigation which we always give first priority.

So we are sort of amassing experience as this statute works its way out and as case law develops. And to the extent that we see problem areas, we will be back asking for some changes and we know of your interest in it, and would obviously come to talk to you first about any problem areas we saw.

But we are committed to prosecuting Government fraud, fraud against the Government and maintaining the integrity of our procurement programs.

Senator GRASSLEY. Well, I believe that there are some areas that it is worth our visiting and talking in detail at your staff and my staff's level. I will have some things that I can suggest. I am not so sure that we will be able to work out some compromise but I am surely very happy to sit down and talk about that, and to suggest what some of those are.

I previously mentioned Vice President Quayle's civil justice reform proposal. I would like to discuss some of these proposals and get your views. One of the reforms that I am most sympathetic with concerns alternative dispute resolution. Again, I got some legislation passed in this area last fall signed by the President and now law. When you were before the committee to be confirmed for Deputy Attorney General, I solicited your opinion on ADR and arbitration. In written responses you expressed your strong sympathy with efforts to encourage arbitration, but declined to give an opin-

ion on the constitutionality of delegating judicial making authority to private parties.

So now that you are back here again, I am curious to know if your opinions in this area have grown in the past two years? Do you remain sympathetic to arbitration and ADR efforts? Do you see any constitutional problems with the use of arbitration as a substitute for judicial decision making?

Mr. BARR. First, as to the ADR as it was embodied in your act in 1990, we ultimately were able to work out our concerns there, and we supported that statute, and we have been working hard to implement it.

We have—

Senator GRASSLEY. And I think there has been a good-faith effort to implement it. I thank you for that and other departments that are cooperating.

Mr. BARR. Right.

In the civil justice reform package, we contemplate use of ADR more in litigation. As you know, your statute dealt with more of the administrative process. Now, we are looking at trying to give ADR a shot in the arm in litigation. And as you know the President just put out an Executive order where he is really trying to take the lead in this area and require the Federal Government, as a litigator, to adopt a lot of these civil justice reforms including ADR. So now we have the mandate under this Executive order to use ADR as much as we can, in the civil litigation area and we intend to do that.

It is coming, with the increased demand that we are placing on our court system on the criminal side as well as the civil, it is becoming more and more important that we try to discipline the civil side of the docket, and ADR is one of those ways we can relieve the burden on the court and help the court manage its workload better and handle priority cases, including serious criminal prosecutions.

Senator GRASSLEY. Do you still have any qualms about constitutionality?

Mr. BARR. I do have qualms about the constitutionality of binding—of delegating to a private party outside the Government the power to bind the Government in arbitration, but that was not implicated in the ADR statute.

Senator GRASSLEY. I guess I would ask within your concerns about constitutionality then, to what extent then would you find yourself supporting and encouraging arbitration efforts if confirmed?

Mr. BARR. I support arbitration efforts. The problem comes when it is binding on the Government with no chance for a senior Government official to review it. And that is the way we dealt with it in your statute, there is a 30-day period where a senior Government official can review the decision and then I think that there are incentives against upsetting an arbitration decision. But I looked at this issue in the administrative context. I have not looked at it yet in the litigation context. I do not know whether the Office of Legal Counsel has, so in a way, I am talking off the top of my head here about constitutional issues, and I really have not looked at it that carefully.

Senator GRASSLEY. Well, beyond the Executive order what do you think we can do to encourage greater use of currently available arbitration procedures?

Mr. BARR. In litigation?

Senator GRASSLEY. Yes.

Mr. BARR. Well, first, I think the Federal Government litigates 25 percent of the civil case load. And so the President has taken a major step by requiring the Federal Government litigators to make full use of ADR.

And, as you know, we are trying to push the broader package, including ADR on the legal profession so that the lawyers generally make greater use of it. I think the administration is showing a lot of leadership in that area.

Senator GRASSLEY. Requiring the loser to pay winner's attorney's fees—and this is also part of Vice President Quayle's recommendations, you know, following the so-called English rule where that is done—actually I guess it is done in almost every place but in America.

Well, what contribution to our civil justice system would the adoption of that English rule make? More specifically, obviously it must be viewed by the administration as positive, what do you intend to do to pursue that?

That goal, I mean.

Mr. BARR. We are proposing a modified English rule in a very limited area to basically use—there have been a number of proposals to do away with diversity jurisdiction. And what we are saying is, let us use diversity jurisdiction as a sort of test bed for a modified version of the English rule. And let us see, based on real experience in the Federal courts, how it works.

The modified version of the English rule has built-in protection for the little guy, to make sure the little guy is not driven out of litigation. It also has built-in protection for the contingency fee plaintiff.

So I think that the ultimate impact of this projecting ahead, if we adopted a modified English rule, would be to help the middle-class litigant, the plaintiff get legal services on meritorious cases where they feel they have a good chance of winning, they would be able to recover their legal fees and be made whole.

As you say, we are the only jurisdiction in the world, the common-law world that does not have the so-called English rule. So we would like to see some experimentation in that area.

Senator GRASSLEY. And you are in a sense saying, implicitly, that this is a goal you pursue and you are going to pursue for the administration?

Mr. BARR. It is a part of our package. Now, we cannot unilaterally impose the modified English rule. That will require either legislation or rule changes in the Federal rules and we are going through the process of deeding what is needed and we intend to pursue it.

We intend to pursue all the recommendations in the civil justice reform package, and would like, frankly, to work with this committee on those ideas and any other ideas to promote civil justice reform. I think steps were taken, I believe in 1990 in a civil justice reform package, and I think we can still do more and I think that

everyone is interested in doing more. And we have told the ABA and the other elements of the organized bar that we would like to work with them and talk with them about our proposals and any other proposals.

Senator GRASSLEY. I know that you have more than a passing concern in the application of American legal authority to events occurring abroad, extraterritorial jurisdiction. I am concerned that American companies are competing on American soil with foreign enterprises that are not subject to strict limitations on monopolies, cartels, and collusion that our antitrust laws impose.

I think it is important that the Antitrust Division actively investigate and prosecute anticompetitive activities by businesses which sell their goods in the United States. American businesses should not have to compete with companies that benefit from an artificially induced absence of competition in their home countries.

Do you have any misgivings about strict application of American antitrust principles to foreign countries trading in the United States?

Mr. BARR. I think we have to move very carefully in applying our antitrust laws extraterritorially because they can have adverse consequences for competition, for American consumers, for our economy, where a foreign government, for example, retaliates or takes action against the United States, if we unilaterally apply our antitrust laws to foreign activity.

However, I think in the foreign area we are moving on two fronts. First, we are trying through international cooperation to increase antitrust enforcement abroad and to reach a better understanding and a common understanding of competition strategies with European and other countries and reaching antitrust agreements, cooperative agreements with trading partners to enhance antitrust enforcement overseas.

So part of it is cooperation and I think Jim Rill has been exercising a lot of leadership in that area, and recently in Japan in the structural impediments initiative we were able, I think, to increase Japanese antitrust enforcement.

But we also are taking a look at enforcement of American antitrust law overseas and we are reexamining that whole issue. The Export Control Act of 1982 provided, I believe, that antitrust laws should apply to foreign practices that substantially and foreseeably affect foreign commerce of the United States. I think the Antitrust Division in 1988 in its international antitrust guidelines tried to back away from that statutory requirement by imposing a limitation on enforcement which says that we would only enforce where there is direct and substantial harm to U.S. consumers.

We are reexamining that 1988 limitation. And are looking at potentially applying antitrust laws solely where there is impact on U.S. companies, U.S. exporters, without having to show an impact on U.S. consumers. So that would be an attempt to return to the 1982 standard in the statute and change the 1988 antitrust guidelines.

That is still under review, but the policy that is being contemplated would include unilateral enforcement in proper cases, subject to considerations of jurisdiction, whether it is an appropriate case under principles of comity. But if the proper case were to

arise, if we do go down this road, then we would be bringing unilateral antitrust actions against foreigners who are violating U.S. antitrust laws.

Senator GRASSLEY. So in summation, do you see it as a useful tool then to see that American businesses have a level playing field in international competition as, you know, it seems to me to accomplish the same goal of some of the suggestions of Vice President Quayle's Commission on Competitiveness is trying to accomplish in other areas?

Mr. BARR. Antitrust is a very valuable tool both domestically—it is an essential tool domestically and internationally. And we have to move cautiously internationally because there can be adverse consequences to unilateral action but we are exploring ratcheting up the use of antitrust laws internationally.

Senator GRASSLEY. I guess my only admonition is, do not fall into the State Department mentality about being so cautious that we continue to lose the battles that we have over a long period of time. I would expect that in the area of the enforcement of the American law that you would have more leeway than a lot of other Cabinet positions have, when dealing in foreign matters. And so that the State Department is not, in the end, making decisions for the Justice Department like we see them making in the Commerce Department with the Special Trade Representative, with the Agriculture Department, to a great extent, on foreign tax policy, with the Treasury Department.

And I just ask you to use every tool you can and be as aggressive as you can in that area.

Let me move on, please.

I would like to bring up an issue that would be no surprise—my 15 minutes is up.

The CHAIRMAN. Go ahead and ask it, if you have another question.

Is it a whole line of questioning, Senator?

Senator GRASSLEY. It would be. But let me ask one question just to get something out now and then it will not be a line of questioning, it will just be one question, but it is another area.

And that is, you know I have had an interest in the American Bar Association's role in judicial nominations.

They have been involved, as I understand, since 1950, to assist the investigation, assessment, qualification of Presidential nominees for the judicial branch. No other private group is allowed to play this quasi-governmental role in the constitutional process as far as I know. And, of course, the Senate has the duty to investigate and assess nominees and does the job quite adequately without the help of the ABA as far as I am concerned.

I would like to have you state for the record how you see the ABA's role in the President's nomination of and the Senate's advice and consent of candidates for the judiciary.

Mr. BARR. Well, the ABA plays a unique role, as you pointed out. It is actually brought into the nomination process itself; that is, before the President exercises his responsibility of making the nomination. He is bringing in a private group to help him assess a candidate prenomination, and that is a unique role. It is to be distinguished from making recommendations about potential nomi-

nees, and it is to be distinguished from rating—that is r-a-t-i-n-g—candidates after they are nominated.

I think that if the ABA is using agreed-to standards and is not imposing its own tests or criteria that haven't been agreed to ahead of time and understood by all concerned, including this committee, that that can be a constructive and a useful role. Somebody has to do that job.

As you know, we have had concerns about it in the past, and we have been watching it very carefully. I would say over the past year we have pretty much ironed out our differences with the ABA, although it is a role that is subject to abuse. And we will be continuing to watch it very carefully, but at this point I am not inclined to make a change.

Senator GRASSLEY. I understand you are reconsidering your decision to not allow State and municipal bar associations to be involved in the nomination process. If the ABA process has some problems—and I think they do—why would you consider compounding the problem by the involvement of other bar associations in the confirmation process?

Mr. BARR. Well, as I say, I have no problem with other bar associations making recommendations. I have no problem with other bar associations evaluating people who are nominated. I would have concerns about bringing other bar associations into the pre-nomination process that is now being served by the ABA, playing the role that is now being served by the ABA, because—

Senator GRASSLEY. Well, then, my information was probably wrong. You aren't reconsidering it.

Mr. BARR. Well, one of the main objections of other bar associations, at least the objection that they have been most vocal about to me, is the affirmative steps that the Department has taken to discourage people from talking to them. They feel that we have blocked their access to people by telling candidates not to talk to other bar associations, and I am taking a look at that issue.

But I would be concerned about letting other bar associations into the process as a sanctioned group like the ABA, because I don't know what the standards are that they are applying and I am not sure where you would draw the line. The ABA is an umbrella group, and I am not sure where you would draw the line. The process could become extremely burdensome on candidates, and there are enough disincentives right now on public service and serving in the judiciary to open people up to that kind of process. So I am concerned about letting them into it the same way the ABA is, but I am looking at the issue of whether or not the Justice Department should be in the business of telling candidates not to talk to those kinds of associations.

Senator GRASSLEY. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Thank you, Senator DeConcini, for your patience?

Senator DECONCINI. Thank you, Mr. Chairman.

Mr. Barr, you and I have talked about the need for cooperation among law enforcement agencies. As a matter of fact, I just read a speech you made in October, October 2, where one of the things you said, "If there is one thing we have learned about fighting crime, it is that success depends on the essential ingredient—coop-

eration." And, of course, cooperation among law enforcement agencies is what you were referring to. I couldn't agree more.

We spoke about this when we visited, and I gave you some examples such as the problem between the FBI and the BATF over gang investigations; Secret Service and FBI over financial institutional fraud investigations, which last year you weighed in or were involved in finding some compromise—I will talk about that in a minute—the Customs Service and DEA over title XXI, 881 authority; between Treasury and the Justice Department on sharing proceeds.

What specific plans do you have, Mr. Barr, to eliminate or reduce this, and are you willing to weigh in yourself to see that these are minimized and some changes made within all law enforcement so there is more cooperation involving each other?

Mr. BARR. I couldn't agree more that it is critical that we strengthen cooperation. It is an essential element of any kind of success on the crime front. Strengthen it first among Federal agencies. That is our own family. And that not only means interagency—that is, Justice and Treasury—but it also means within the Justice Department. We have agencies in the Justice Department who sometimes are getting into turf fights. And I have weighed in to the specific issues that you have just raised, which are mainly Treasury agencies interfacing with Justice agencies.

My general approach is we can't let turf fights distract us. We have to get on and get the job done in the most effective and efficient way. As I mentioned to you when we were talking about this earlier, my principal concerns are let us do it in a coordinated way. Let us not just go off on our own and, you know—

Senator DeCONCINI. Well, Mr. Barr, are you prepared to continue that policy, to weigh in and, you know, if it so happens that Border Patrol has more merit, are you willing to tell the FBI or Treasury or Customs or whoever is working there that, hey, this isn't the way to operate? That is what I am really looking for.

Mr. BARR. Absolutely. As you know, I weighed in on the BATF issue, and we worked out a compromise there.

Senator DeCONCINI. Yes, you did.

Mr. BARR. I think there was some misunderstanding on the FBI/Secret Service issue, but I think that when the smoke cleared, I think you appreciated—

Senator DeCONCINI. I will ask you a question on that, but on the BATF on the gang issue, Thornburgh wrote a letter opposing that legislation. That doesn't help much when we are trying to get some compromise, and as a result, we really dropped the whole thing although the FBI and your designee came up there and did try to work something out.

But let me give you an example. The Secret Service has specific authority under section 528 to undertake financial institutional fraud investigations through coordination with the Attorney General. And since November 1990, the Service has investigated 245 cases of financial institutional fraud through 57 offices throughout the country, and thus far the Service has arrested 98 individuals, 48 of which have resulted in felony convictions. And recent Department of Justice reports on financial institutional fraud indicates that the FBI is receiving about 3,000 of these criminal referrals a

month. But for the month of July 1991, the latest month for which we have statistics, the FBI only opened 608 cases. This leads me to believe that cases are not being worked due to lack of resources, and here you have the Secret Service willing to provide some of the resources.

That being the case, can you tell me why since August 1991 the Secret Service has not received any FIF referrals from the FBI?

Mr. BARR. No, I can't. I would have to look at those figures and find out more about the situation.

Senator DECONCINI. Would you, please?

Mr. BARR. However, I will say that when I have traveled around, I have talked directly to the Secret Service people out in the field, and I think I mentioned this to you before. I have asked, "Any problems here?" And the word I am getting from the field is that there are no problems. Maybe I am hitting the wrong jurisdictions.

The other thing is I have made it clear to the Secret Service head, John Simpson—who I guess is now leaving so I will make it clear to his successor. I made it clear to Pete Nunez, the Assistant Secretary of the Treasury for Enforcement, that if there is any foot dragging or turf fighting in this program, that they are to take it directly to me so I can deal with it. And as far as I am aware, no one has come and complained.

Senator DECONCINI. I don't think they have, and I get my information from some of the ones who are here at headquarters and some of the ones out in the field. And maybe there is a reluctance to bring it there, maybe partly because you weren't confirmed or they didn't know how to do it.

Do you know, does the Department of Justice have a policy instructing its agents not to conduct any FIF cases of under \$100,000?

Mr. BARR. I don't know the answer to that. I do know what I said at a meeting, sort of the Magna Carta meeting of this concordat between the FBI and the Secret Service, which was that it should be a regional decision as to how best to use the resources. If in a particular jurisdiction the best way of using the resources is smaller cases, fine, if that is what the people in the field think is the best way to use it. In other cases, it could be joint investigations or big cases.

I have heard conflicting things from some people in the Secret Service. Some have told me they want a lot of smaller cases to build up the expertise. Some have complained that they are getting the little cases and they are not getting into the big cases. So—

Senator DECONCINI. I would just hope that you would look at that after your confirmation.

Mr. BARR. Sure.

Senator DECONCINI. Let me go to the forfeiture fund. Do you support the equitable sharing of proceeds from seized criminal assets with State and local law enforcement? I suspect you do.

Mr. BARR. Absolutely.

Senator DECONCINI. And how about equitable sharing among Federal law enforcement bureaus?

Mr. BARR. Yes. In fact, we have expanded sharing to other agencies.

Senator DECONCINI. Including outside the Justice Department?

Mr. BARR. Yes. We have brought the Postal Service in and believe in it strongly.

Senator DECONCINI. Do you have any estimates from the DOJ forfeiture fund how much they received annually based on law enforcement investigations outside the Department of Justice?

Mr. BARR. How much agencies outside—

Senator DECONCINI. Yes. How much outside have they contributed to the DOJ forfeiture fund?

Mr. BARR. We have those statistics, but I wouldn't know them off the top of my head.

Senator DECONCINI. Well, I am not sure either, but it seems to be safe to say that the IRS alone contributed \$100 million plus to it last year. And just for the record, they only received \$3 million in sharing of these funds. Our understanding is that roughly there is \$500 million in that fund, after the so-called expenses of administering that fund is taken out. And the Justice Department had instituted a policy of 15 percent for your handling it and 20 percent of it if the seizure is challenged in court.

My concern and question is do you think a better job can be done to get more of this money back to some of these agencies that are outside Justice as well as those that are inside Justice, perhaps Border Patrol and others, of this fund?

Mr. BARR. Yes. The theory originally—and there is some merit to it—is that we shouldn't have a speed trap mentality in the Federal Government, so that agencies should not feel that just because they seized the money they are going to get the money. And the theory was that you should have a central allocator and a set of priorities that dole out the money without regard to who brought it in.

I don't think it has been—if, in fact, there has been inequity, it is not Justice Department parochialism. It is the setting of the priorities and just the way the money was spent to meet those priorities.

However, I have made it clear to Treasury—and I will say it here now—that I would fully support a regime whereby Treasury agencies get a pro rata share of what they bring into the fund, provided that the Secretary of Treasury dole out that money among Treasury agencies so that they don't have a speed trap mentality over there, so that if IRS gets the money they feel that, you know, they get—

Senator DECONCINI. I think that is a good solution, and I hope that you would encourage that, because I think somebody has to make that decision, and I don't trouble too much—maybe I do—with the Secretary of Treasury because of his noninvolvement in law enforcement, but somebody has got to make the judgment, and I see your point. And I am encouraged that you say that there ought to be more sharing outside the Department, as well as within. I don't know how much of a portion the Border Patrol gets, but I suspect it is very little. And I would like to see that changed.

Am I correct in stating that you would have no objections to the establishment of a separate fund for the Treasury Department, that in your understanding the objections probably will come from OMB?

Mr. BARR. I am not sure about what OMB's position is. I have told Treasury that I would support a separate fund for Treasury if all the rules were the same, so we don't have the unseemly specta-

cle of Government agents running around bidding for local business.

Senator DeCONCINI. Fair enough.

Mr. BARR. But in the course of those discussions, it was my impression—and, believe me, these discussions have taken circuitous turns and twists over the months. But it is my impression that Treasury now may feel that they are a lot better off leaving the management to the Department of Justice and just getting the pro rata payout. I don't know if that is still their position, but for a period of time it was their position.

Senator DeCONCINI. Yes, I have talked to them a number of times, and their position seems to go back and forth on that. I think what they would really like is a greater sharing of those assets. I think if that seemed to be clearly your policy, if confirmed, maybe you will have some time to designate somebody and tell them what you want to see happen there, and I think that would be a great improvement.

Let me ask you a couple of questions, Mr. Barr, about the Border Patrol. I have discussed this with you and expressed my frustration about the lack of attention given this critical law enforcement agency. The Justice Department has maintained that Congress has failed to provide the funding necessary to meet authorized staffing levels, and that is just not true. The fact is that funding for Border Patrol has increased 63 percent since fiscal year 1986 due in large part to the efforts of Senator Hollings and Senator Rudman, and the Congress who has backed this. And the administration has not been there making these requests.

However, despite these increases, GAO found that staffing for the Border Patrol along the southwest border had declined by 9 percent since 1986, and the attrition rate is 34 percent, the worst, I think, in all law enforcement, even below the Bureau of Prisons.

Now, as Attorney General, do you intend to make the Border Patrol a greater priority within the Department, and can you give me your commitment now to see that this important law enforcement agency is given the funds and attention required to carry out its mission?

Mr. BARR. Absolutely. The Border Patrol is a superb professional organization, and I intend to support it fully. I more generally have tried to support the INS, which I think has suffered from underinvestment for a long period of time, and the Border Patrol is paying the price for that.

Senator DeCONCINI. Indeed, they are. Indeed, they are, and GAO certainly substantiates just what you said.

Mr. BARR. I have increased the budget priority of the INS as a whole and the Border Patrol specifically, and I will be seeking more resources for Border Patrol personnel and for investment in their equipment, which, as you know, is old and—

Senator DeCONCINI. If you succeed in getting that, through OMB or not through OMB, but out of Congress, will you do what you can—and you can have a lot to do with it—to see that the INS doesn't sop up for their legitimate needs some of the appropriations that are set aside for the Border Patrol?

Mr. BARR. Absolutely. I would have to approve any reprogramming of the funds.

Senator DECONCINI. Have you ever given some thought that Border Patrol maybe should not be in Treasury? I realize that is turf and sensitive—

Mr. BARR. Is that a Freudian slip when you say "Treasury"? [Laughter.]

Senator DECONCINI. I mean in Justice, about it being in Treasury or a separate agency, or at least a separate agency within Treasury where it would not be the problem that you and I have discussed and that you now indicate that you are willing to get into? I don't care where Border Patrol is. What I do care about is that they get the short shake of the budget and have for literally 15 years, since I have been here, except 1 year when President Reagan's budget did ask for a substantial increase in the Border Patrol. To me that is a disgrace.

My question is not a Freudian slip; it is a direct one. Do you think that Border Patrol—have you ever given it thought that it might be either an independent agency within the Justice Department rather than under INS or some place else?

Mr. BARR. I have given passing thought to a proposal that I have seen floated occasionally, but I believe that we can improve INS and the Border Patrol within the Department of Justice.

INS is a very difficult agency to manage. It has difficult assignments, sometimes conflicting responsibilities, and, in an era of tight resources, it is sometimes not getting the resources it should have.

I have spent a lot of time, as Deputy Attorney General, on INS, to help the head of INS upgrade the agency, improve the management, and start rebuilding the infrastructure, and I would intend to continue to do that, if I am confirmed to be Attorney General.

There is an adage that INS has broken more careers at the Department of Justice than any other agency, but I am willing to take the risk and, if at the end of my time, it is a better agency, which I think it will be—

Senator DECONCINI. I can tell you, Mr. Barr, you would be the first Attorney General in the almost 15 years I have been here that would really pay attention to INS. I have asked these questions of every Attorney General, and every Attorney General has more or less said yes, more should be done, and I must say every Attorney General has not done it, and your immediate predecessor made strong commitments here. That is water under the bridge and there is no use going back over it. I could read you statements that Mr. Thornburgh said, and there was little or no improvement. As a matter of fact, there has been a denigration towards the Border Patrol.

I am pleased with your attitude, I must say, and it helps me feel very comfortable in my support for your nomination, that you have a grasp of the INS-Border Patrol problem within your own Department of Justice, and it is just as big or bigger than GAO or Senator DeConcini or somebody else may have told you, and you have that understanding and I appreciate it.

Detention centers that are under INS need some attention. Basically, the potential human rights violation within those centers and how you are going to deal with the expanded number of immigrants that are going in there.

Mr. BARR. Can I say something, Senator?

Senator DeCONCINI. Yes, please.

Mr. BARR. The GAO report we did get. That came down and that made a lot of recommendations and pointed out a lot of problems in the INS, and we didn't even wait for it to be finalized before trying to attack those problems. You may know that I asked Norm Carlson, the former head of the Bureau of Prisons, to come and do his own survey of INS, to help identify areas where we can improve it. I know you are talking partly about resources, but there are also management issues there.

Senator DeCONCINI. I suspect there are great management needs changes there.

Mr. BARR. You know, Norman Carlson, I think, deserves the respect he has in the community.

Senator DeCONCINI. He does from this Senator.

Mr. BARR. The bottom line of his report was that the INS people out in the field are doing a terrific job, they are dedicated, they work hard and, by and large, they are getting their job done, and I think they deserve the support of the leadership of the Department of Justice and they deserve the support of Congress. I know if it weren't for your appropriations, through your fund, then the Border Patrol would be in worse shape than it is now.

Senator DeCONCINI. Has Mr. Carlson finished that report and recommendations? Is that what it is to you?

Mr. BARR. Yes.

Senator DeCONCINI. Is that available for us to review?

Mr. BARR. It wasn't public, but I would be glad to—

Senator DeCONCINI. I would just like to see it. I have the greatest respect for that man and what he did at the Bureau of Prisons and other things, and maybe there is something that we can learn from that report, as well.

Mr. BARR. Yes.

Senator DeCONCINI. Thank you, Mr. Barr.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator.

Senator Leahy?

Senator LEAHY. Thank you, Mr. Chairman.

Mr. Barr, if there is another vacancy on the U.S. Supreme Court while you are Attorney General—

The CHAIRMAN. Don't say that, please. [Laughter.]

Senator LEAHY. I just want to make sure the chairman is listening.

If there is another one and you are Attorney General, the President will look to you to make recommendations to him of whoever the best men and women available for that position. Have you thought in your own mind what kind of criteria you would use, if you were asked to make that sort of recommendation to the President?

Mr. BARR. Not in great depth, but generally the traditional criteria of competence and integrity and judicial philosophy that is compatible with the President's.

Senator LEAHY. You would want to be able to give the President somebody who is the best person possible, I would assume, though, and carry out your obligations?

Mr. BARR. Generally, yes, but—

Senator LEAHY. Generally, yes. You wouldn't give the worst person to the President, obviously. I am not trying to play games. I am just trying to think what goes through your mind in making recommendations. Perhaps we can step back a little bit and take it step by step. You would want to give the best names possible, is that correct, within the criteria you have just mentioned?

Mr. BARR. Certainly.

Senator LEAHY. And how do you determine in your own mind—I am not asking for names, but how do you determine in your own mind, looking at a person you are going to walk over to the Oval Office with and say to the President of the United States, in my estimation, this is the best man or woman for the job, or here are the best three people for the job, or whatever? What are you looking at?

Mr. BARR. As I said, I would look first for integrity, I would look for professional competence, I think being a very strong substantive lawyer, with strong analytical ability would be paramount for me, and a judicial philosophy that is compatible with the President's philosophy.

Senator LEAHY. The President said that Justice Thomas was the best person for that job. Was he?

Mr. BARR. I believe he was.

Senator LEAHY. The New York Times reported that White House Counsel Boyden Gray and then Assistant Attorney General Michael Luttig and others had watched Prof. Anita Hill testify, realized her testimony was pretty powerful and compelling, and decided that, after watching it—and I quote now the Times—"their only course was to pick apart Professor Hill's case, even if this involved a direct attack on her character."

The Times further reported that the President approved of the effort, the White House assembled a team of lawyers from the White House, from the Justice Department and the EEOC to amass evidence against her, along with help from Republican Judiciary Committee staffers. Is the New York Times' account accurate?

Mr. BARR. I did not have personal involvement in support for the logistical—

Senator LEAHY. That wasn't my question.

Mr. BARR. I am going to answer your question—in the logistical support for the Thomas confirmation, but I am confident that the Office of Legal Counsel behaved professionally and properly throughout.

I am told, and it is my understanding, that OLC lawyers did not go out proactively to investigate Anita Hill. They didn't conduct their own investigation. My understanding is that OLC lawyers performed the traditional role of lawyers, which was to take the information that was coming in, transcripts, statements, and so forth, and to analyze them. But I am not aware of an instance where an OLC lawyer affirmatively went out to collect information.

I am told that there was one instance where a lawyer from the Office of Legislative Affairs one night was asked by a Senator to make a call to try to track down someone who was purported to have some pertinent information and, at the request of the Senator, placed a call, but never got through to that individual. But

that is the only instance I am aware of where a Department of Justice lawyer can be characterized as going out and affirmatively seeking information against Anita Hill.

Senator LEAHY. To reiterate my question, is the New York Times article accurate?

Mr. BARR. I thought I answered the question, which—

Senator LEAHY. When they said that, "Their only course"—speaking now of Assistant Attorney General and White House counsel—"Their only course was to pick apart Professor Hill's case, even if this involved a direct attack on her character." Was that decision made?

Senator THURMOND. Senator, could I interrupt you for just a minute? Did you say they said the Republican staff, do they mean the committee staff? Is that what you said?

Senator LEAHY. I am not referring to the committee staff now. I would just like to get this question answered.

Senator THURMOND. Well, I want to know if you said the committee staff. If so, I want to tell you it is untrue.

Senator LEAHY. You know, we have a—

Senator THURMOND. This committee staff did no such thing.

Senator LEAHY. We sometimes have a problem up here, that when I ask questions of administration appointees, that the answers come from the other side.

Senator THURMOND. I understood you to say the Judiciary Committee staff, and I am only interested in that part.

Senator LEAHY. The record will speak for itself. I think Mr. Barr, though, is a nominee who is capable of answering for himself and doesn't need somebody else to answer for him. So, if I could go back to the basic question, the New York Times said, reports that White House Counsel Boyden Gray and Assistant Attorney General and others decided during the day that Prof. Anita Hill's testimony, "Their only course was to pick apart Professor Hill's case, even if this involved a direct attack on her character." Is that inaccurate?

Mr. BARR. I don't know.

Senator LEAHY. OK. Do you know whether, as the Times further reported, that President Bush approved of the effort and that the White House assembled a team of lawyers from the White House, the Justice Department, and the EEOC to amass evidence against Professor Hill?

Mr. BARR. And that I think I answered. My understanding of OLC's role was to provide support through the process. That support has been given past candidates, it was going on for months before Anita Hill made her allegations, and it continued through those last few days where the committee's deliberations were focusing on Anita Hill's allegations, but the support was the support that OLC traditionally gives, as lawyers. It was not to go out and amass evidence against Anita Hill. As I say, I am not aware of OLC going out and conducting an investigation to attack the character of Anita Hill.

Senator LEAHY. And during that evidence—

Mr. BARR. But I don't think there was anything wrong with putting her allegations to the test in the advice-and-consent process.

Senator LEAHY. And was that done also with the help of Republican Judiciary Committee staffers?

Mr. BARR. With the who?

Senator LEAHY. With the help of Republican Judiciary Committee staffers, staffers from the minority side of the Judiciary Committee.

Mr. BARR. Was what done?

Senator LEAHY. Putting together the same evidence you just talked about, the same facts you just referred to against Professor Hill or regarding Professor Hill.

Mr. BARR. I don't know what Republican committee staff did. I am told that OLC lawyers did not conduct their own investigation into Anita Hill.

Senator LEAHY. Did the White House and the Justice Department orchestrate tactics with members of this committee to go after Professor Hill? Did they coordinate, did the White House and Justice Department coordinate tactics with members of this committee regarding Professor Hill, if you know?

Mr. BARR. Well, I assume that departmental lawyers were coordinating with the committee and the committee staff, as they do through every nomination. I don't know what you are referring to by "tactics."

Senator LEAHY. Well, it was obvious during the hearings that every effort was made to go against Professor Hill's character, and we had, according to testimony that came out, that the FBI was following whatever she said and then reporting whether there were any differences in what they had heard from earlier interviews, something they did not do with others they had interviewed—

Mr. BARR. Excuse me, Senator. I am told that they did monitor Clarence Thomas' testimony, and I am also told that they made both sets of agents available to the committee.

Senator LEAHY. Well, without going into FBI reports, my recollection is somewhat divergent from yours, and I would be glad to discuss it further with you out of the committee room.

In a case like that, what is the Justice Department's role? Is it simply let's find out what is the truth, or is it a case of saying the nominee is the President's nominee, the President is our client and we will act, in effect, as an adversary, in an adversary role to protect our client?

Mr. BARR. Well, I think if allegations are made against an administration nominee, the first issue is to try to get to the bottom of the allegations. I think the administration has the obligation to make a judgment for itself about the veracity of allegations about a nominee, and if the administration concludes that those allegations are unjustified, I think it is perfectly appropriate for the administration to defend its nominee through the advice-and-consent process.

Senator LEAHY. How involved is the Justice Department in getting into that? Do they start involving themselves with tactics, with so-called spin control, PR?

Mr. BARR. As a prudential matter, I would not have liked to see the Department go out and conduct an investigation to impeach a person making allegations, and, as I said, I don't think that happened.

Senator LEAHY. Do you think that following the investigation, once the hearing began, did the Justice Department involve itself in efforts to impeach that witness?

Mr. BARR. Well, as I said, the Office of Legal Counsel performed the normal work of lawyers. That is what the Office of Legal Counsel are. They are lawyers in the administration, they provide support for administration nominees, and I think it was appropriate for them to review the record, to review the transcripts, to review the allegations that were being made and the evidence that was coming in and point out areas that required exploration or potential discrepancies. It is part of the truth-finding process, and I assume that is what this committee was trying to do.

Senator LEAHY. And did they spend a great deal of time on that in this case?

Mr. BARR. Of course. There was a very—well, they spent a great deal of time, because my recollection is it was a fairly concentrated effort, it was over a matter of a few days, and there were a lot of groups that were performing that function against Clarence Thomas. I don't think it is realistic for the committee to feel that an individual can come up here and not have the support of the administration that is nominating him.

Senator LEAHY. I will go back into that. Rather than use up all my time here, we had news reports which recently revealed that Ed Rogers, who had been a political aide to John Sununu, entered into a \$600,000 contract with Sheik Kamo Adams only weeks after Mr. Rogers left the White House. The sheik, as I understand, is a former head of Saudi Arabian intelligence, but the more important thing is he was supposed to have had a major role in the financial corruption that seems to be coming out of BCCI.

Now, as I understand it, the Justice Department—as I go down through these facts, if I am misstating it, from your view, please interrupt me, because I want to make sure we both look at the same set of facts—the Justice Department claims that Mr. Rogers played no role in arranging a meeting between the Department of Justice and Sheik Kamo in Cairo, Egypt, where Federal prosecutors and Kamo discussed Kamo's role in the BCCI affair. But the meeting did occur soon after Kamo retained Rogers, and Rogers was in Cairo when the meeting occurred. Does that so far purport what you understand are the facts?

Mr. BARR. That is my understanding. That is what I have been told.

Senator LEAHY. Now, let me just act within that context, what issues are raised, if you have a high-level White House aide who goes to representing a target of a major Justice Department investigation just week after leaving the administration? Are there any special concerns?

Mr. BARR. There are two principal legal issues. One is under the law, under the Ethics in Government Act, did Ed Rogers participate in BCCI matters while he was in the Government. If he did participate in BCCI matters and then left the Government and took on representation in that area, that would implicate the Ethics in Government Act.

The second issue would be whether he had any contacts relating to BCCI with his employing agency, the White House, and if he did

before the expiration of the cooling off period, and this second concern would arise, regardless of what his exposure to BCCI was previously. It is a separate issue.

If, before the cooling-off period, he had contacts with the White House regarding a particular matter like that, then that would also implicate the Ethics in Government Act.

Senator LEAHY. By cooling off, you mean the revolving door—

Mr. BARR. The 1-year absolute bar on contacts.

Senator LEAHY. My time is up. I will come back to this. I know on the other side they go over time fairly often, but I don't want to go over that. Senator Thurmond may be concerned about this line of questioning, and I will hold it for another time.

The CHAIRMAN. Well, we have all gone over the time and you are entitled to go over the time because we all have, Democrats, as well as Republicans. But Senator Thurmond would like to ask a few questions.

Senator THURMOND. Since your time was up, I wanted to ask some questions.

Senator LEAHY. Thank you, and I am perfectly willing to wait until my next two or three rounds.

Senator THURMOND. Mr. Barr, I think one of the most serious domestic problems today is violent crime. There is a murder committed every 22 minutes, a rape every 5 minutes, a robbery every 49 seconds; what do you believe can be done to address the crime problem today in this country?

Mr. BARR. Well, as I said when I was stating my priorities, I think the violent crime problem, while primarily a State and local matter, there are areas where the Federal Government can make a difference. One, obviously is in prosecuting the drug war because there is a relationship between drugs and violence.

A second would be in attacking criminal organizations, that is gangs, street gangs, many of which are involved in drug trafficking themselves, and I think there are some initiatives we can take in that area. We are focusing OCDTF, the Organized Crime Drug Enforcement Task Forces more on those kinds of organizations like the Cripps and the Bloods. You may have read about the FBI anti-gang squad that was established in Washington, and I think you will be seeing more of that nationwide.

A third area would be attacking, trying to contribute federally to the problem of career criminals, armed career criminals. We have strong firearm statutes under Federal law and we are seeking some additional statutes and we realize that a very high proportion of violent crime is committed by a very small group, a cohort of hardened criminals, career criminals and we can use the firearm laws to apprehend these individuals and put them away in Federal prison for long periods of time. And I think we have launched some, we have had some success with the program we have launched recently, the trigger-lock program where we have now charged, since April, over 2,200 armed career felons under that statute.

I think also we have to focus on strengthening the criminal justice system itself. We have done a lot in the Federal System during the 1980's, and the Federal System is shaping up as a fairly good system, although we think we have some unfinished business, that

is what the President's crime bill is all about, so that there are some things that we can still do at the Federal level. But I think States should start following suit. Some are and have adopted a lot of the reforms but a lot of have lagged behind and I think the Federal Government can play a leadership role in encouraging States to adopt the kinds of strong laws, like pretrial detention laws and other laws that help reduce violent crime.

And then I think the Federal Government can also promote innovation by investment through the Bureau of Justice Assistance and NIJ in pilot programs and in research.

Senator THURMOND. Thank you, very much.

I authored some legislation on child pornography and obscenity. And I just wondered what, in your opinion, steps could be taken to eliminate this insidious material?

Mr. BARR. Well, as you know, the Department has created a section in the Criminal Division that is dedicated to this mission. We have added some personnel to that section and they are involved nationwide in prosecuting child pornography and other forms of obscenity. And I think that program should continue to be supported.

Senator THURMOND. I want to commend you again for your great work on the Federal prison facility riot that occurred, and to what extent was this uprising attributable to overcrowding in the Federal prison system, and what would you suggest, as Attorney General, to address the problem?

Mr. BARR. I do not think it was attributable to generic overcrowding in the prison system. It may have been contributed to, to some extent, by a backup that occurred on the deportation of the Mariel Cubans. That is the group that we are talking about. And there were delays caused by Cuba's decision not to accept a particular flight of Mariel Cubans which backed up the system and meant that there were more Cubans in that particular facility than there should have been at that time.

And that may have contributed, to some extent, to it, maybe to the magnitude of the crisis, but I am not sure that the crisis would not have occurred anyway.

Senator THURMOND. I have been a long-time proponent to join multistate and local organized crime and narcotics projects, known as Regional Information Sharing Systems, better known as RISS. I believe they perform a valuable service to both State and local law enforcement agencies.

There is a Regional Organized Crime Information Center, or ROCIC. I think it is doing a fine job. Do you have any plans to expand that or to improve it in any way?

Mr. BARR. I believe RISS is essential, those are the Regional Information Sharing Systems; there are six regional systems that have been set up in the United States to help local law enforcement to coordinate their activity interstate.

As you know, the administration, having set up this system, would now like to see the States pay for them, their continued operation, and has sought to basically zero out the Federal contribution to the program, but that has not found favor on Capitol Hill. So last year the Federal Government continued investing in it. I think it was about close to \$15 million.

But regardless of who should pay for it, it is an important system, and it must continue. Clearly it is in no danger of being zeroed out right now.

Senator THURMOND. I am glad to hear you say that. There is a vote on now, Mr. Chairman, I guess we will have to go vote.

Now, Mr. Barr, I want to congratulate you on your record so far. You have done a fine job; we are proud of you and I hope we can confirm you forthwith and I think you will make one of the finest Attorney Generals this country has had.

Mr. BARR. Thank you, Senator.

The CHAIRMAN. Thank you.

Mr. Barr, as you can see, we are about roughly half-way through the process in the first round. As I indicated to you, it is likely that there will be a number of questions on BCCI, many of them, most of them, if not all of them generic. There is, if not a dissatisfaction, a disquiet in some quarters of the Senate with the depth and speed and thoroughness of the Justice Department's activities thus far.

So I expect you will be asked more questions on that tomorrow. I would also like to, tomorrow, as I indicated to you, talk to you about the separation of powers issues. But I appreciate your taking the time today.

We will reconvene tomorrow at 10 o'clock and hopefully move along swiftly.

All right?

Mr. BARR. Thank you, Senator.

The CHAIRMAN. Recessed until tomorrow at 10.

[Whereupon, at 5:33 p.m., the committee recessed, to reconvene at 10 a.m., on Wednesday, November 13, 1991.]

CONFIRMATION HEARING OF THE NOMINATION OF WILLIAM P. BARR TO BE ATTORNEY GEN- ERAL OF THE UNITED STATES

WEDNESDAY, NOVEMBER 13, 1991

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The committee met, pursuant to notice, at 10:10 a.m., in room SD-226, Dirksen Senate Office Building, Hon. Joseph R. Biden, Jr. (chairman of the committee) presiding.

Present: Senators Biden, Kennedy, Metzenbaum, DeConcini, Leahy, Heflin, Simon, Kohl, Thurmond, Hatch, Simpson, Grassley, Specter, and Brown.

The CHAIRMAN. The hearing will come to order.

Welcome back, Mr. Barr, and welcome to your family. The girls are going above and beyond the call of duty. At least they got their doodling pads today.

Welcome back. We will just begin. We will proceed ad seriatim. We are not going to slow up; we will just keep going. There will be a vote at 10:30. I would urge my colleagues if we could arrange for some to leave early, the next questioner to leave earlier so we can just keep right on going if we could.

Our first questioner this morning is the distinguished Senator from Ohio, Senator Metzenbaum.

Senator METZENBAUM. Thank you, Mr. Chairman. Welcome, Mr. Barr. Nice to see you again.

Mr. Barr, I know that there were some questions yesterday in connection with the BCCI matter, but I would like to inquire a little further of you concerning that matter.

Is this mike working? Can you hear me all right?

TESTIMONY OF WILLIAM P. BARR, TO BE ATTORNEY GENERAL OF THE UNITED STATES

Mr. BARR. I can hear you, Senator.

Senator METZENBAUM. In December 1989, it came to my attention that the Justice Department, through its U.S. attorney in Florida, had entered into a plea agreement with a number of BCCI entities concerning a major money-laundering enterprise involving BCCI. I thought at the time, and I still think, that the plea agreement gave away far too much for too little. And on January 19, 1990, I, along with Senators Heflin, DeConcini, and Kerry, wrote then-Attorney General Thornburgh concerning the two most important aspects of the agreement. One was the financial penalties

which amounted to the forfeiture of \$14.8 million and waiving of all fines subject to 5 years' probation, and an agreement not to proceed with, in this language, "any other Federal criminal offenses under investigation or known to the Government" at the time of the agreement.

Now, I think you would agree that was an unbelievable provision not to proceed with any other Federal criminal offenses under investigation or known to the Government.

We noted our strong disapproval of that agreement in our letter to the Attorney General. Senator Kerry and I, along with several Members of Congress, also wrote the judge in the case who had to review the agreement, and I am frank to say to you that I think that is the first time that I have ever seen fit to write a judge in connection with a pending matter since I have been in Congress.

I can't recall Members actually doing this, but I think it was an indication of how strongly we felt and how concerned we were. In spite of our efforts, the Attorney General went forward with the agreement, and the judge accepted it.

Now, I realize that the \$14.8 million forfeiture was three times larger than any other previous fine, but the Department never before had a case of such national and international implication. According to yesterday's Financial Times, Kenya had fined the bank over twice that amount for breaching some foreign exchange regulations a year earlier. And certainly a \$14.8 million forfeiture—not a fine—for a company that had duped the ruler of Abu Dhabi, according to yesterday's Washington Post, out of \$2.5 billion, \$14.8 million was a drop in the bucket.

Furthermore, as I understand it, the forfeiture was a deductible amount, whereas a fine would not have been deductible. Now, I have the IRS Code here, and as it apparently indicates, no deductions shall be made with—I am advised that—my staff clarifies for me the point. I thought that the forfeiture would be deductible. I am now advised that it is not deductible. But the fact is that the \$14.8 million, deductible or not, was a mere slap on the wrist for a \$20 billion enterprise.

Would you care to comment on that kind of a settlement and amount for a company as large and involved in the kind of activities which BCCI was involved in at that time?

Mr. BARR. My understanding of the plea agreement is that we faced an adverse ruling by the judge in that case that would have substantially limited the amount that we could forfeit. And we were faced with a situation where the amount that we could ultimately get would be limited to the bank's profit, which would be in the range of \$220,000.

Faced with that ruling, we went after a plea agreement where we would get the full \$15 million we were seeking, which I think correlated to the amount we could prove being laundered by BCCI. So I think that was, in the opinion of the professional prosecutors who were doing the case, an excellent deal for the Government. We were able to avoid that adverse ruling.

Second, I am informed that the language concerning matters known to the Government is relatively standard language and bound only the Tampa office. So it does not bar the United States, either any other U.S. attorney's office, or the Department of Jus-

tice, from pursuing BCCI as a company. It only binds the Tampa office, and I am told that is relatively standard.

We also were able to obtain a cooperation agreement from the corporation, which, if performed upon, could substantially assist us in——

Senator METZENBAUM. But wasn't the cooperation agreement only limited to the subsidiary company that was operating in Tampa and denied you the right to get cooperation from the parent company and the subsidiaries? Let me read you the language that was entered into.

To the extent permitted by law, defendant agrees to cooperate fully with the United States Attorney's Office for the Middle District of Florida in the investigation and prosecution of other persons, such cooperation further to include compliance with reasonable requests for disclosure of all relevant information, including production of any and all books, papers, documents, and other objects in its possession or control relating to relevant matters and making its agents and employees available at a mutually convenient time and place for interviews by law enforcement officers with respect to the information that is disclosed.

That was only with respect to that subsidiary; whereas, it is my understanding that in the original filing it encompassed much more, because that subsidiary was just a very small participant, very small part of the whole corporation. And you didn't get any agreement for cooperation from the parent company or from the other subsidiaries. And I just ask you whether or not, in a matter as significant as BCCI is, whether the Department wasn't remiss in its responsibility to really get the kind of cooperation needed from the parent company because certainly the parent company's activities involve a whole host of matters that may be of criminal significance.

Mr. BARR. As I said yesterday, my focus since getting involved in BCCI is the prospective task of prosecuting this case with every resource available and as aggressively as we can. And while I am generally familiar with the allegations about the way it has been handled in the past, I haven't immersed myself in all the details. And I am not, frankly, well-acquainted with the scope of the cooperation agreement, but let me say this:

We were faced with a situation—this is my understanding of it—where we were going up against a company and five individuals, and they were waging a scorched-earth defense, paid for by the company. Even after that plea agreement——

Senator METZENBAUM. Would you explain the scorched-earth defense?

Mr. BARR. There were hundreds of motions; every delaying tactic, every claim that could be made was being interposed. It was putting a tremendous strain on the prosecution team. These people were fighting tooth and nail. We had a situation where we had an adverse ruling against the Government that would have substantially limited our ability to forfeit property. We ended up getting the bank out of the case, getting \$15 million, which was three times the forfeiture level that had ever been imposed on a financial institution in this country, and getting—whatever the scope of the cooperation agreement, it is more cooperation than we were getting before we entered into the plea agreement.

Senator METZENBAUM. What was the adverse ruling to which you refer?

Mr. BARR. My understanding is that it limited us to the profit. It threatened to limit us to the profit derived by the bank from the laundering transactions rather than the sums that were laundered.

Senator METZENBAUM. Are you saying that there was a threat to come down with that ruling, or that there—

Mr. BARR. No, I think it was a ruling.

Senator METZENBAUM. It was an actual ruling?

Mr. BARR. That is what I am told.

I am sorry. The judge announced that he was going to rule. I guess there was no actual ruling.

Senator METZENBAUM. And tell me again—

Mr. BARR. Let me just say, Senator, Congressman Schumer chairs one of the committees reviewing this ongoing investigation, and while he may have criticisms in some areas, I think he did look into the plea agreement, and I think the conclusion of his report was that criticisms of the plea agreement were unfounded.

Senator METZENBAUM. Prior to the agreement, as I understand it, the Justice Department had issued subpoenas concerning BCCI's involvement with First American Bank. Under those circumstances, since they had issued the subpoenas to the parent corporation, do you not have difficulty with the settlement giving this broad-based agreement not to go forward to prosecute any other companies in connection with matters that are then under investigation?

Mr. BARR. Who issued the subpoenas?

Senator METZENBAUM. The Government.

Mr. BARR. Well, as I said—

Senator METZENBAUM. Or the Justice Department.

Mr. BARR. Well, as I said, the plea agreement, my understanding of the plea agreement was that it limited only Tampa and only as to information then known. So I don't see a problem.

Senator METZENBAUM. Well, it is 2½ years. Well, it is not 2½ years since that particular case was decided. It must be about a year, a year and a half, I guess. The Justice Department has not moved forward with any other indictments, as I understand it. Is that correct?

Mr. BARR. No. There is a second indictment, money-laundering indictment in Tampa.

Senator METZENBAUM. Pardon?

Mr. BARR. In September, we have another money-laundering indictment. September.

Senator METZENBAUM. But beyond that, nothing with the parent corporation and nothing with the other subsidiaries?

Mr. BARR. That is correct.

Senator METZENBAUM. Do you have any idea when, if at all, any action might be taken?

Mr. BARR. Yes.

Senator METZENBAUM. Could you give us some idea?

Mr. BARR. I am afraid I can't discuss the timing of potential future indictments, but as I said yesterday, we have a far-reaching and aggressive investigation under way of all allegations that have surfaced. We have 37 prosecutors now in the case. We have investi-

gations ongoing in five districts, and in the District of Columbia, we have a merged task force that has three different teams pursuing BCCI matters.

I am confident that as the evidence sufficient to support an indictment comes into our possession, there will be indictments.

Senator METZENBAUM. Can you explain to us—something that I know only because I read it in a magazine—why the Justice Department, according to Time Magazine “abruptly suspended its inquiry into BCCI’s secret ownership of First American”? How did that come about, if it is a fact?

Mr. BARR. I don’t know what that refers to. My understanding of the chronology—as I said yesterday, there are four basic allegations, sets of allegations that have been made about BCCI. One is money laundering, and that is something that law enforcement agencies, like the Department of Justice and like the Customs and IRS agencies of Treasury, that is our primary jurisdiction and that has been pursued. And we have two indictments in Florida on money-laundering charges.

The other major set of allegations has to do with secret ownership of financial institutions. There the Fed has primary jurisdiction as the regulatory agency. My understanding is the Fed for some time has been concerned about the rumors and the speculation of the secret BCCI ownership of financial institutions and has been pursuing that.

The big breakthrough came in December 1990 when the internal auditors, Price Waterhouse, operating from the United Kingdom, did a comprehensive report. And that served as a basis for the Fed to make a criminal referral on these allegations of secret ownership. That referral was made in January, I think late January of this year, to the Justice Department, and now we are and have been pursuing that set of allegations.

I think by and large the system has been working. The money-laundering charges have been pursued, two indictments racked up, five individual BCCI people convicted. And the regulatory—

Senator METZENBAUM. Those are the five from Tampa?

Mr. BARR. Yes.

Senator METZENBAUM. They are the only ones who have been convicted so far?

Mr. BARR. Well, because of our case, I think also the United Kingdom was able to convict one—one, I think—two. So as far as I am aware, the only points on the board, the only people from BCCI who have actually been brought to justice have been as a result of Treasury Department agencies and Justice Department activity.

Senator METZENBAUM. The thing that is so bothersome about the Tampa agreement was that it only provided that you would get cooperation from the people involved at that Tampa subsidiary. And at the time I was criticizing the agreement as too lenient, I was told by the Justice Department that one of the reasons we were giving up so much was in order to get cooperation in pursuing individuals and higher-ups. The agreement, however, only calls for, as you know, cooperation from that subsidiary, even though the original indictment included the four companies and numerous individuals.

Under those circumstances, how does the Justice Department justify its just getting that kind of cooperation agreement rather than—since the others had already been indicted, the four companies as well as numerous individuals, how could the Justice Department not insist upon cooperation from at least those four companies as well as the numerous individuals who had been indicted?

Mr. BARR. As I said, I am not well versed in the precise scope of the cooperation that was sought, and I really couldn't talk about what kind of cooperation has been forthcoming. But it was the judgment of the prosecutors in that case that that is the cooperation that they needed and wanted, and as part of an overall plea agreement, it was very beneficial to the United States because we got very substantial forfeiture, which we were threatened with losing altogether.

The CHAIRMAN. Excuse me for 1 second, if you will.

I am now told by staff there will be two votes back to back. So with the permission of the committee, I would like to just let the Senator continue the line of questioning for a few minutes because we are not going to get into another—rather than start with Senator Specter and interrupt him. And I would suggest that at about 20 of, 25 of, we all leave and go vote, vote early on the second vote, and come back, if the committee doesn't mind, rather than having to go back over.

Senator METZENBAUM. I am perfectly willing to take it out of my second round.

The CHAIRMAN. I know you are, but don't worry about it. Just go ahead and finish up for another 5 minutes rather than start a new line of questioning. Is that all right?

Senator METZENBAUM. OK.

The CHAIRMAN. Thank you.

Senator METZENBAUM. Thank you, Mr. Chairman.

Mr. Barr, let me just ask you—maybe you were asked this yesterday—about a totally different subject, on your views as to whether the Constitution conveys a right to privacy. Now, I am not asking about a specific case, but just whether or not you think—

The CHAIRMAN. Excuse me, Senator. I hate to do this. With your permission, before you get to a new line, I would like to ask once again, if you don't mind, a followup on what we are talking about on BCCI.

Can you define for the committee again what your responsibility and line authority has been relative to the investigation of BCCI since your return to the Justice Department in 1989?

Mr. BARR. I became deputy, acting deputy in May 1990. During the summer of 1991, this past summer, Dick Thornburgh directed Bob Mueller, the head of the Criminal Division, to take direct charge of all aspects of the BCCI investigation.

The CHAIRMAN. Let me ask this question, from May of 1990 until the summer of 1991, what was your responsibility relative to the oversight of the BCCI investigation, and did any of the people who were in charge of pieces of that investigation report directly to you? Did you have line authority?

Mr. BARR. The deputy has line authority over everybody in the Department. All components report through the Deputy Attorney General. But the Justice Department is largely a decentralized op-

eration in the sense that litigating divisions pursue their cases, U.S. attorneys pursue their cases, and it is usually only when issues come up, force an issue up the chain, that something is pulled into the deputy's office, and dealt with there.

The CHAIRMAN. When was this pulled into the deputy's office?

Mr. BARR. I do not know if it was pulled into the deputy's office. But at the time the press stories were rampant in the summer, I think in June and July, obviously—

The CHAIRMAN. Of 1991?

Mr. BARR. Yes. That is when I started more direct involvement in the matter. Dick Thornburgh obviously was quite interested that this be done. He had a direct line, obviously, with anyone in the Department, including Bob Mueller, the head of the Criminal Division, and directed Bob to, as I said, take charge of the matter, track down the allegations that were being made about slip-ups in the past, but also ensure that it was being carried out effectively for the future.

And, at that point, I started getting more involved, particularly, obviously, when Dick Thornburgh left the Department on August 15.

The CHAIRMAN. One last question, sir, and I apologize, but for me, at least, this is a central point. Other than the Attorney General, whose desk did all the activity relating to BCCI that was going on in the various U.S. attorneys' offices and other places—was there any one place that Thornburgh had centralized this prior to Mueller? Or were there just 10, 12, 2, 7, 15 individuals all going off—when you have a strike force, you all have one outfit, one deal, you all sit down together, there is 1 table that it eventually all comes to, there is a place from which judgments emanate.

Did that organizational mechanism—not necessarily a strike force—but what was the organizational mechanism used to deal with this octopus that you, not you, but the Department must have realized was an octopus, well before the summer of 1991—who was in charge?

Mr. BARR. Well, each U.S. attorney was in charge of their part of the investigation. Now, my impression is that there was not that much crashing around or conflict prior to the first part of 1991. And so the ongoing investigations would be monitored by the Criminal Division, but the Criminal Division would not exercise line authority over the U.S. attorneys.

The money-laundering cases were one part of the investigation, and the regulatory violations, potential violations, really took shape after the Price Waterhouse report, which as I said, was criminally referred to the Department late in January 1991.

So there you then start a new sequence, and then new charges were made around that time, including this worldwide ponzi scheme, an allegation of payoffs and a lot of these allegations started surfacing in the first part of 1991, and that is what called forth a need for better coordination.

The CHAIRMAN. And that is the first time Justice Department heard about these allegations?

Mr. BARR. The allegations of—

The CHAIRMAN. The allegations that you just referred to.

Mr. BARR. Well, as I said yesterday, the allegations of money laundering and potential secret ownership were known for some time and were being pursued. The allegations relating to corruption and this notion of the whole institution as a worldwide ponzi scheme really came about around the time and following the Price Waterhouse report. That is my impression of the sequence of events.

Senator METZENBAUM. Mr. Barr, who at Justice has control or is aware of the problems that maybe arise by reason of the statute of limitations running on any one of these various crimes? As I sit here, it just seems to me that without some centralized control over that aspect of the case, that a number of these crimes are going to go by the board because the statute will have run.

Is there somebody at Justice—were you in charge of seeing to it that the statute problem was looked into?

Mr. BARR. As I said yesterday, Senator, I'm comfortable now that we have a good coordinated investigation going and an aggressive one, and part of that is, as I said, more coordination coming out of Washington, including monitoring any statute of limitations issues that arise.

So we are aware of statute of limitation issues and the investigation is being prioritized in order to deal with that.

Senator METZENBAUM. Do you know if the statute has run against the possibility of bringing any particular case?

Mr. BARR. I do know that where we think a statute might run we have assured ourselves that it would not preclude the bringing of a case on the count that we have in mind. In other words, that there is a continuing sequence of events, and, therefore, we are not losing the opportunity to prosecute what we want to prosecute.

Senator METZENBAUM. But—

Mr. BARR. And we are very conscious of that.

Senator METZENBAUM. But the statute has run in connection with some parts of the case that might have been brought, do you think?

Mr. BARR. No, I do not think so. I will not say I do not think so, I will say, no.

Senator METZENBAUM. No. Is that correct?

Mr. BARR. No.

Senator METZENBAUM. Mr. Chairman, I just have a couple of other questions on other subjects, although I may want to return for a second round.

I started to ask you whether or not you share your point of view with respect to a woman's right to choose, not asking to terminate her pregnancy, of course, without asking you specifically about any cases that may be coming before the Court, have you taken a position? Do you have a view on that subject?

Mr. BARR. On whether there is a right to privacy?

Senator METZENBAUM. The right to privacy and the right of a woman to choose to terminate her pregnancy.

Mr. BARR. I have not taken a position on it publicly, I do not believe. I believe that there is a right to privacy in the Constitution. I do not have fixed or settled views on the exact scope of the right to privacy. I do not believe the right to privacy extends to abortion, so I think that my views are consistent with the views that have been

taken by the Department since 1983, which is that *Roe v. Wade* was wrongly decided and should be overruled.

Senator METZENBAUM. You say you think it should be overruled?

Mr. BARR. I believe *Roe v. Wade* should be overruled. I think that the basic issue is whether or not abortion should be something that is decided by society, by the people, the extent to which it is permitted, the extent to which it is regulated. That those are legitimate issues for State legislatures to deal with and that is where the decision making authority should be.

Roe v. Wade basically, in my view, took it away from the States, and found an absolute right in the Constitution foreclosing any kind of role for society to place regulations on abortion and I do not think that opinion was the right opinion. It is the law of the land, and until it is overruled it remains the law of the land.

The CHAIRMAN. Yes, I think we have to go. You just have set another landmark. You have given the first candid answer that anyone has given on *Roe v. Wade* that I can remember in God knows how many years. I disagree with your view, but it is astounding to me and you are to be complimented, thank you, for being candid with us. We are unaccustomed to candor, and I appreciate it very much.

I think we should, at this time, recess for 10 minutes; that will allow us to catch the tail end of this vote and the beginning of the next and then we will begin with Senator Specter.

[Recess.]

Senator SPECTER [presiding]. The hearings will resume.

Senator Biden, the chairman, had expressed the view that we vote early and return, and we have awaited his arrival. But after consulting with the chief staffers, they think it would be acceptable to the chairman to proceed. So we will do that at this time.

Mr. Barr, I was in Pennsylvania yesterday and arrived a little late for the hearings and did not have an opportunity to join my colleagues in welcoming you here, which I do now. The position of Attorney General of the United States is one of vast importance. I do not believe there is a position of greater importance in Government or a position of greater importance in the country than Attorney General of the United States, with the vast powers and the quasi-judicial, quasi-advocate's role of that position. The motto over the Justice Department I think says it best when it says that "The Government wins its case when justice is done." And that is a very, very high responsibility which you have.

In our contacts so far from your position in the Justice Department, I have been very pleased with your responsiveness and your professionalism, and I congratulate you on your nomination. Coming through as a careerist, I think that is a very strong signal and a good one, subject, of course, to confirmation by the U.S. Senate. And there are a number of questions which I have for you, and I begin with the issue of the respective roles of the Senate and the President in the Supreme Court nomination process.

There has been a good deal of analysis as to what are the respective roles. During the confirmation hearings of Attorney General Thornburgh, or perhaps it was the hearing on the role of the American Bar Association, I had raised this question with Attorney General Thornburgh and had asked him, "Do you think that the

Senate or a Senator in the individual vote has the same range of discretion that the President has in the consideration of political ideology"? And my point really goes to the nature of the relationship, and it reflects a concern which I have had about many Supreme Court nominees coming, placing their hands on the Bible, promising not to make law but to interpret law, and then really making law, as they did in the *Griggs* case, overruling it in *Wards Cove*, and really making law in *Rust v. Sullivan*, a regulation which had been in effect for 18 years on congressional intent.

Attorney General Thornburgh responded—I am quoting the relevant parts, but not his full answer, but nothing is out of context—"I think each Senator has to assess the qualifications of judicial nominees from his or her own point of view. I am very reluctant to offer advice to you and your colleagues in that regard."

My question to you, Mr. Barr, is: Should the Senate be on an equal par with the President constitutionally, or is the Senate on an equal par with the President constitutionally in assessing ideology and judicial philosophy in the confirmation process as the President does in the nomination process?

Mr. BARR. I am not sure what you mean by equal par because they are performing different roles. But I fully agree with Governor Thornburgh's statement about the role of each Senator in the advice and consent function.

Senator SPECTER. When I say equal par, I mean do you think that it is constitutionally appropriate—I know it is up to each individual Senator. A President makes a selection of a nominee on the basis of judicial philosophy and ideology. Would you consider it appropriate for a Senator to vote against a nominee if the Senator disagrees with that judicial philosophy, judicial ideology?

Mr. BARR. I think each Senator has to decide for themselves in their own conscience how they carry out their responsibilities under the Constitution. I would urge Senators to give deference to the President and not to vote to reject a nominee on philosophical grounds. However, I believe that a Senator has the constitutional power to vote as he pleases—he or she pleases.

Senator SPECTER. Mr. Barr, I like your statement which was made yesterday that a big part of the Attorney General's job is to "anticipate the slumbering giants with programs to uncover fraud in areas of insurance, pension funds, computers, and health care." I applaud you on that in terms of the pursuit of white-collar crime and official corruption or business corruption. Those are very, very important items. Sometimes they just don't get enough attention.

On the issue of drug enforcement, we have had many debates in this hearing room, as we have had a variety of public officials come forward, on our allocation of funds between enforcement on the one hand and education and rehabilitation on the other. There has been a two-thirds/one-third split, with two-thirds of the money going to enforcement and one-third going to education and rehabilitation.

As I have taken a look at the issues and the problems of stopping drugs coming in from South America and the difficulties of fighting street crime, it has been my view that we really ought to have nearer an even split between enforcement on the one side and education and rehabilitation on the other.

That is a broad question, but I would be interested in your views, as you prospectively may head the Department of Justice, which has under it DEA and a great many of the functions on all sides of the parameters of dealing with the drug issue in this country.

Mr. BARR. I think that the drug war, as I said yesterday, is going to be a protracted conflict, and it is going to require a battle on two fronts—law enforcement on the supply side, but also working on the demand side through social programs and education and other efforts. Ultimately, law enforcement cannot do the job alone, and the real battle is the battle for the hearts and minds and values of our citizens.

But I don't think the job can be done without law enforcement, either, and I think that the resources we are putting in now should not be cut back. So I would urge you not to reduce the amount in the law enforcement side of the effort. However—

Senator SPECTER. How about adding enough to make it 50-50 by additions for the education-rehabilitation programs?

Mr. BARR. I am not sure of the extent to which we need to add so much as—there are a lot of programs out there besides the programs in the drug account. A lot of social rehabilitation programs, education programs, health programs, urban renewal programs that in my view could be better integrated with a law enforcement effort and brought to bear in a coherent fashion with what we are doing on the law enforcement side.

As you know, because you were really the force behind setting up the violent traffickers project in Philadelphia, that was an effort targeting a neighborhood, working closely with the community to attack the violent gangs and the drug-dealing gangs there in a coalition with State, local, and Federal agencies. And you know how successful that was on the law enforcement side.

There has now been an effort to bring in—now that we have taken the crime out, bring in the social programs that will help rehabilitate that neighborhood.

Senator SPECTER. Well, I appreciate your good words about the strike force which we brought into Philadelphia with legislation in 1986. It was a pilot program implemented in 1988, and it has become the model Trigger Lock across the country.

I would be interested in your evaluation, speaking on that subject, Mr. Barr, as to the effectiveness of the armed career criminal bill.

Mr. BARR. I think the armed career criminal law is one of the most effective tools we have in combating violent crime in this country. It enables us to get repeat offenders who are responsible for so much of the violence on the streets and put them away in Federal prison for long periods of time, 15 years and more. And the Bureau of Alcohol, Tobacco, and Firearms has done a study that clearly shows that these armed career criminals are responsible for a disproportionate amount of the violent crime.

If we can attack this violent cohort, we can have a real impact on the level of violence in our society. And the Trigger Lock Program, which is using this as one of its principal tools, just since April has charged 2,600 persons under these firearms statutes that we are talking about. So far we are experiencing a conviction rate of 91 percent.

Senator SPECTER. One of the recent studies on career criminals concluded that career criminals commit as many as 700 crimes a year. Do you think that is a realistic figure?

Mr. BARR. I think that is realistic. I saw another study that indicated that armed career criminals, people serving time now under the Armed Career Criminals Act, admitted three serious crimes a week during their criminal activity. That is another study. And each of them had six prior convictions, felony convictions. These are the hard-core criminals that we should be going after, and the armed career criminal statute is just the tool to do it.

In fact, using that really as a basis of experience in a model, we have sought tougher gun penalties in the new crime bill that the Senate passed recently.

Senator SPECTER. The Federal courts have a unique opportunity to work effectively on drug crimes, and there has been a move by the Justice Department to prosecute more cases in the Federal courts in Philadelphia, which is an adjunct of the strike force which we have already talked about.

The State court system in Philadelphia has many problems, and the Federal system has the individual judge calendar which precludes judge-shopping, has preventive detention where appropriate, and then does have the tougher sentences. So when someone is brought into court in the Federal court on drug violations in Philadelphia, it is a totally different atmosphere. I thank the Department for working with the Philadelphia D.A., Lynn Abraham, and your outstanding U.S. attorney, Michael Baylson, and also in conjunction with the State attorney general, Ernie Preate. That has been a program which has produced much by way of results.

Picking up on one other aspect of it, Mr. Barr, I would be interested to hear your views on the weed-and-seed program where it is just in the pilot stage and what you intend to do to try to bring more funding so that after the so-called weeding is done and the drug dealers are ousted, what seeding efforts there will be on rehabilitation of neighborhoods to try to improve the conditions that led to the drug usage.

Mr. BARR. The weed-and-seed concept is exactly what I was talking about, the need to integrate law enforcement with social rehabilitation programs, not divert law enforcement resources away from law enforcement but to make sure that the moneys and the resources that we are spending on the social side are coordinated. We spent \$9 trillion in this country on social programs over the past 25 years, and a lot of that investment has been neutralized by the problem of violent crime in the cities.

The concept of weed-and-seed is that we need the integrated approach of taking out the criminal element in neighborhoods and in communities in close association with the leadership of those communities, and then working with the private, the State and local, and the Federal sector to help rehabilitate those communities.

We have obtained in our fiscal year 1992 budget some money for weed-and-seed projects. We also intend and are looking at the possibility of using some asset forfeiture money to supplement that. And we are working with other departments in the administration to get them involved in this program.

Senator SPECTER. My yellow light is on, so let me take up one more question before yielding to my colleagues. That is an issue which I raised with Attorney General Thornburgh and am still concerned about, and it relates to the question about leased properties being subject to the same rules as properties which are constructed. The issue relates to a decision made by the Department of Labor with respect to a lease of a building constructed for use as a VA outpatient clinic in Crown Point, IN.

The Department of Labor concluded that it was a contract for construction of a public building. The fact that it was leased does not mean that it wasn't a contract for construction. That issue went to the Wage Appeals Board, and it is a very serious matters on two lines: first, as to the substantive issue, but, more importantly, Mr. Barr, because the Department of Justice has not followed a court ruling, which is of great importance.

But let me just take a moment. After the Department of Labor had decided that the lease was the same as construction for purposes of being a public building, the Department of Justice Office of Legal Counsel, on June 6, 1988, ruled that the Crown Point lease is not a contract for construction.

This involves a technical point of law. When you have a long-term lease, for all intents and purposes it amounts to the same thing as construction. But it is subject to interpretation.

Then on September 6, 1988, the Federal court in the District of Columbia, with Judge Revercomb making the decision, held that the Attorney General's opinion did not vacate or supersede the Wage Appeal Board's decision. I then raised the question with Attorney General Thornburgh in one of the hearings, and he wrote back to me saying, in a letter dated May 7:

The District Court's decision is, in our view, quite clearly mistaken as a matter of law. Despite our views regarding the flaws in the District Court's opinion, the administration decided for procedural reasons not to appeal to the Circuit Court. The decision not to appeal, however, does not in any way affect the validity of the June 6 OLC opinion.

Now, the first question I have, Mr. Barr, is: How can it be that the Justice Department disregards a district court's decision? I appreciate the fact that the Attorney General has responsibility for handing down legal opinions if there is a dispute between the Department of Labor and the Veterans' Administration. But after the court rules, isn't the Justice Department bound to follow the court's ruling or, in the alternative, to take an appeal?

Mr. BARR. Senator, I am not that familiar with the circumstances of this issue, and so I would want to look into it and examine what the circumstances were, and also look at the issue itself.

Senator SPECTER. Well, I would appreciate it if you would because the issue of the Justice Department's not following the district court's decision appears to me to be very questionable. In fact, I would say I think it is wrong. If the district court makes a decision, the court ought to be followed and not the opinion of the Department of Justice. And if the Department of Justice disagrees with it, I respect that, but they have to take an appeal. They can't disregard the district court's opinion.

I would like you to respond on that, and then I would like you to take a look at the underlying question. Because according to the

information provided to me, the Department of Labor is unwilling to buck the Justice Department, and so you have this situation where you have leased premises, which are about the same as a construction, because if it is a long enough lease, for example, a 99-year lease, it is about the same as a fee interest. So I would like you to look at both those issues for me.

Mr. BARR. Certainly, Senator.

Senator SPECTER. Thank you very much, Mr. Barr.

Senator HEFLIN [presiding]. Mr. Barr, in my opening statement, which I didn't get a chance to present but which will be made a part of the record, I mentioned that you had a very important role in the resolution of the Talladega prison crisis. With that experience behind you, what changes should be made to decrease the chances of something like that happening again?

Mr. BARR. I would have to wait and see a full analysis of the Bureau of Prisons as to how the Cuban inmates actually took control of that unit. It may have been an oversight or a slip-up in normal security procedures by some of the personnel that permitted the Cubans to overpower the corrections officers and take control of that unit.

I am not in a position to say that prison overcrowding caused or substantially contributed to the incident, but generally speaking, prison overcrowding does increase the risks of these kinds of incidents and limits the degree of supervision that the corrections officers can have over the prisoners. That is one of the reasons it is important for us to press ahead with the investment we are making now in new Federal facilities to decrease prison overcrowding.

Senator HEFLIN. This is just a suggestion, it may not have much merit to it, but at the time you have prisoners of similar views and similar backgrounds, if they are separated, the chances of their coming together to form a group are lessened, I think, in regards to it, which may be a situation that—they are all Cubans, and, as I understand it, were together and, therefore, they communicated in their language, which I don't know whether there were any prison guards that basically could have understood the Cuban Spanish or not, but there are some things like that that could possibly work out in regards to the future. This may be an isolated instance.

Mr. BARR. That is a good point, and I am going to take it up with the Bureau of Prisons. I understand that, on the other side of it, was our experience with the Mariel Cubans, that they trashed normal prison facilities, completely destroyed them, so that wings had to be specially fitted out and equipped to withstand the kind of wear and tear that this particular population had, and I think that was a factor for concentrating them in one facility.

But I think the point you raise is a good one and I will certainly talk to Mike Quinlan about it.

Senator HEFLIN. Now, the President's Council on Competitiveness regarding an agenda for civil justice reform, I have discussed this with you privately. Of course, we hear reports that the Justice Department may be planning the same proposals to Congress for consideration. Do you have any idea as to when the Department of Justice expects to send these to Congress?

Mr. BARR. Shortly, and I think, as a prelude to that, we would want to come up and talk to members of this committee that are interested in the civil justice reform issue and get some preliminary views on this package, because maybe there are some additional things we could include.

Senator HEFLIN. The word "shortly" is a word of great variation. Are you talking about 2 months, 3 months, 4 months? I think, as I understand it, you were talking about in the spring, that the Solicitor General was going to be involved. Can you give us some sort of fairly definite date?

Mr. BARR. I cannot.

Senator HEFLIN. All right. Now, in responding to how the Federal Government can include itself in reforming civil litigation, the President signed an executive order on October 23 of this year, in which he outlined a number of specific proposals to be followed by Government attorneys. Will you describe the Justice Department's actions in response to the President's executive order, and how soon do you expect the Department to be in full compliance with this order?

Mr. BARR. The kinds of actions that we are now taking within each division are to insure that the litigators of each division are fully acquainted with the requirements of the order, and that the management of the division and the various sections insure that they are carried out, and they include such things as precomplaint notification, efforts to review discovery requests, efforts to resolve discovery disputes, mandatory conferences, and things like that, to reduce the costs and the burden on the courts of civil litigation. This will be done unilaterally by the U.S. litigators, and we have moved, obviously, directly to do that in each of our litigating divisions.

Senator HEFLIN. Well, I understand that the President, in his proposal, says that no litigation counsel should file a complaint initiating civil litigation, without making a reasonable effort at settlement.

We hear a lot of complaints, and my experience in regard to litigating with the Government goes back several decades and may be out of date, but it was common practice that, say, for example, in condemnation cases, where the Government was acquiring property, that they would never make anywhere close to their final offer until litigation had proceeded, and a lot of litigation could have been avoided if they had made reasonable offers of settlement prior to instituting the litigation.

I just think this is a step forward that needs to be followed through and be considered by all agencies of Government, particularly the Department of Justice.

There have been a number of judges that have contacted the Judiciary Committee pertaining to offsite security, and the General Accounting Office at this time is currently conducting a study regarding the issue of offsite security, including the role of the U.S. marshals in such a program. Of course, this was brought to light by the fact that Judge Vance was killed.

The question is, Do you feel that the offsite security is necessary, and what support should the Department of Justice be willing to offer?

Mr. BARR. In the wake of the Vance murder, we did work with the Judicial Conference Court Security Committee, the marshals did, to develop an offsite security plan, and it had three components. One was home or domestic residential security alarm systems. Another was automatic car-starters, and a third was cellular telephones for each judge.

This was above and beyond the offsite security that would be provided on a threat-specific basis by the U.S. marshals. So, obviously, if any particular judge had a threat against them or there was a particular circumstance that suggested a need for additional security, then the marshals would have provided personnel for that.

But we are talking about now other generally available offsite security. My view was that was fine, but I believe that should be included in the courts' budget, not in the Marshal Service's budget, and I felt this was consistent with the 1987 understanding about what money goes in which budget. I felt that infrastructure investments like these, like the courtroom systems and the metal detectors and the kind of equipment that goes into the courthouse is covered in the courts' budget. It is part of the regular operation of that branch of government, and I thought this was akin to that, this was going to be sort of the regular cost of doing business for each judge to install one of these systems in their houses, and so forth, but that we would be glad to administer any part of that program.

So, that was my view and I believe that ultimately was agreed to by the Court Security Committee, although there were some dissenting voices of judges who felt that should go in the marshals' budget.

In the real world, my view was that, if that was put in the marshals' budget, we would not get the money and we would have to cut back on the marshals program substantially, and I think I was proved correct, because, on this fiscal year's budget, we ended up losing 225 marshals that we were seeking for the new judges, and so forth. So, times are tight and I thought the best place to get the money for that offsite security for the judges was in their budget.

If it is in their budget, obviously, I would support it.

Senator HEFLIN. There have been some suggestions from some judges that Congress pass a law which, in effect, would allow them to carry a pistol. This would mean that you would have to either give them a status as a law enforcement officer or some other type of a status, in order that that law be a preemption over State laws regarding carrying concealed weapons. Do you see any offhand—and maybe you might want to give some thought and furnish us this later—do you see any offhand problems about that?

Mr. BARR. I would want to give that some thought. I do not see any legal problems, obviously, with giving them that authority through a Federal statute. I think it is largely a question of policy.

Senator HEFLIN. Well, if you would give us some thought on this, we would like to have it, because this suggestion has been made relative to this.

In the crime bill that recently passed, there is a provision relating to safe schools, specifically, schools directly affected by crime and violence, and through this proposed program, in an effort to create a proper learning environment, the Bureau of Justice Assist-

ance could make available grant money to these local educational agencies hardest hit by such crime and violence. What is the position of the Justice Department on the program? And I would like to hear what policy should be enacted to curtail violence and illegal drug use in our schools.

Mr. BARR. I think it is critically important to directly attack the problem of violence that surrounds schools, not only in the schools, and there is a problem there, but also in the immediate environment of schools, the drug dealing and the violence that frequently occur. That is part of what I was referring to before, the need to ensure that our social programs are not overwhelmed by crime.

I think that sounds like an excellent grant program and concept. When you total up all of the money authorized in the crime bill, it is probably more than we are ever going to get appropriated under current circumstances, but, in concept, I think we should be targeting money at the problem of violence in schools.

Senator HEFLIN. Well, we have had hearings and, almost to the man, law enforcement officers have testified, including from the top of Federal agencies to the policemen on the beat, that if you are going to stop illegal drugs in this country, it has got to be really attacked primarily at the demand level, which means education.

Of course, we have passed various drug legislation, we have attacked all interdiction, the supply, and all of this. But considerable thought ought to be given to the educational aspect of it. There are a lot of good programs. We have a program in my State known as TASK, by which law enforcement officers frequently come and discuss drugs with young people. It seems to me that if we are going to war on drugs, that the advice of law enforcement officers that education is the primary effort is going to eventually win that war, and I hope that you give it consideration. Do you have any thoughts on this?

Mr. BARR. I agree that this war will ultimately be won on the demand side. That is not to say we can in any way pull back in the effort on the supply side, but, ultimately, as I said, it is a battle for the minds and the hearts and values of the people, and that starts with the youth.

It is encouraging that there seems to be progress being made among the youth in drug use. Over the past 3 years, for example, current drug use activity among adolescents has fallen substantially, and that gives us hope for the future.

Senator HEFLIN. One of the problems facing the executive branch and the legislative branch has been the use of leaks and, in many instances, the use of leaks of information that is confidential, done for the purpose of putting a spin on certain types of things, or else to curry favor with certain people in the media or other reasons.

Now, without discussing specific instances, what steps do you feel are necessary to safeguard against the leaking of vital information, and what policies would you intend to implement to protect against such occurrences?

Mr. BARR. From the Department of Justice or government, in—

Senator HEFLIN. From the Department of Justice and also advice in regard to whether or not more stringent laws ought to be

passed, or what. We are living in an age of spin publicity, largely as a result of leaks in the executive branch and the legislative branch, and this is a matter that I think is of concern to a lot of people that are trying to do what they think is right relative to matters, and I just wondered if you have any thoughts pertaining to this.

Mr. BARR. I think the key information to protect from premature public disclosure is either national security information, and in the Department of Justice, information relating to grand jury proceedings covered by 6(e), or information relating to ongoing criminal investigations. When that kind of information, that kind of sensitive, either classified or highly confidential information is leaked, I think, obviously, it is incumbent on those in leadership to do the best they can to find out who violated the law, who leaked the information, and take appropriate action.

Beyond that, it is obviously very injurious to our institutions and to the processes of government, where information is leaked prematurely, deliberative information, not necessarily classified, not necessarily relating to ongoing investigations, but deliberative information about meetings, where people are laying out options and so forth. And if that information is leaked in a premature fashion, then, obviously, that hurts the ability of government to function effectively, and the appropriate steps there are really administrative in nature within each agency, rather than a prosecutive or law enforcement kind of response.

Unfortunately, in most circumstances, my experience has been that it is very difficult to determine what the source of the information was, who the source of the information was.

Senator HEFLIN. Thank you, sir.

[The prepared statement of Senator Heflin follows:]

**SPEECH OF SENATOR HOWELL HEFLIN
ON THE NOMINATION OF WILLIAM P. BARR
TO BE THE ATTORNEY GENERAL OF THE
UNITED STATES**

NOVEMBER 12, 1991

MR. CHAIRMAN,

**MR. BARR, I WOULD FIRST LIKE TO WISH YOU (AND YOUR
FAMILY) A WARM WELCOME TO TODAY'S HEARINGS.**

**AS MANY OF MY COLLEAGUES HAVE STATED, THE
POSITION OF ATTORNEY GENERAL IS ONE OF THE MOST
IMPORTANT IN THE LAND.**

AS THIS COUNTRY'S CHIEF LAW ENFORCEMENT OFFICER,

THE ATTORNEY GENERAL HAS THE AWESOME RESPONSIBILITY OF PROTECTING SOCIETY FROM CRIMINALS WHILE SAFEGUARDING THE INDIVIDUAL RIGHTS OF OUR CITIZENS. THIS RESPONSIBILITY MUST BE CARRIED OUT IN A MANNER THAT INSPIRES CONFIDENCE IN THE AMERICAN PUBLIC. THE ATTORNEY GENERAL MUST BRING TO THE OFFICE THE HIGHEST PERSONAL AND PROFESSIONAL STANDARDS.

YOUR BACKGROUND AND EXPERIENCES ARE CERTAINLY IMPRESSIVE, AND INDICATE THAT YOU ARE WELL QUALIFIED TO BE ATTORNEY GENERAL. YOU HAVE A REPUTATION OF BEING INTELLIGENT AND THOUGHTFUL, YET TOUGH. THESE ARE ATTRIBUTES WHICH I FEEL ARE NECESSARY TO BE EFFECTIVE IN THE POSITION OF ATTORNEY GENERAL.

RECENTLY, YOU DEMONSTRATED THESE OUTSTANDING CHARACTERISTICS WHEN YOU SPEARHEADED THE JUSTICE DEPARTMENT'S ROLE IN THE TALLADEGA PRISON UPRISING. FROM ALL ACCOUNTS, YOUR LEADERSHIP WAS INSTRUMENTAL IN THE EFFECTIVE RESOLUTION OF THAT CRISIS. I WOULD LIKE

TO TAKE THIS OPPORTUNITY TO COMMEND YOU FOR YOUR LEADERSHIP AND THANK YOU ON BEHALF OF THE PEOPLE OF MY HOME STATE.

MR. BARR, I LOOK FORWARD TO YOUR TESTIMONY BEFORE THIS COMMITTEE. THROUGH THIS QUESTION AND ANSWER PROCESS YOU WILL BE ABLE TO HELP THE SENATE DETERMINE IF YOU ARE THE RIGHT PERSON TO BE OUR NEXT ATTORNEY GENERAL. I AM PARTICULARLY INTERESTED IN HEARING YOUR VIEWS ON THE CONTINUING BATTLE AGAINST THE USE AND IMPORTATION OF ILLEGAL DRUGS. SPECIFICALLY, THE ROLE YOU FEEL THE ATTORNEY GENERAL SHOULD PLAY IN IMPLEMENTING A WORKABLE STRATEGY THAT WILL FURTHER ADDRESS THIS LONGSTANDING PROBLEM.

I CONGRATULATE YOU ON YOUR NOMINATION AND WISH YOU WELL THROUGHOUT THE CONFIRMATION PROCEEDINGS.

THANK YOU MR. CHAIRMAN.

Senator HEFLIN. Senator Brown, I believe it is your turn.

Senator BROWN. Thank you, Mr. Chairman.

One of the many responsibilities that you will have as Attorney General will be assisting the President in reviewing potential candidates for the Federal courts. The administration, through a variety of spokesmen, have had a number of initiatives and suggestions on ways to deal with the burgeoning litigation explosion in the United States.

One area that occurs to me that perhaps will be directly under your purview is reviewing the attitudes potential members of the judiciary would have with regard to frivolous litigation. Obviously, current rules provide redress in this area, including the awarding of attorney fees for frivolous cases.

My question is, Do you think potential judges' attitudes about awarding attorney fees is an area that is worthy of inquiry in examining or evaluating candidates for the bench?

Mr. BARR. I would not focus solely on the awarding of attorney fees, but I myself, when I have been involved in evaluating candidates, have looked at their record and talked to them about their views on a whole range of topics relating to case management, the handling of frivolous lawsuits, the extent to which they are following the guidance of the Supreme Court in the *Cellotex* case; that is, the willingness of the judge to grant summary judgment where there really are no genuine material issues in dispute. So, I think that whole area of managing the civil docket and being willing to follow the leadership of the Supreme Court in dealing with frivolous lawsuits is a legitimate area of inquiry and should become more so.

Senator BROWN. One of the things that you commented on yesterday in response to Senator Metzenbaum's question was the whole area surrounding BCCI. The transcript indicates you said, I think, it is unfair generally to be conducting an autopsy on a live body; this is an investigation in midstream. That is a fair comment, in my view. Obviously, to try and evaluate the performance on the BCCI area, when you are in the process of conducting an investigation and moving forward on it, is somewhat premature in some aspects.

But I want to draw your attention to at least an aspect of it that concerned me, with the hope of obtaining your reaction to it.

One of the things that we were advised or have been advised is that the CIA gained knowledge of BCCI's efforts to take over First American in the early 1980's. My recollection is that somewhere in 1985 that they passed that information on to Treasury. It is also my impression that Treasury did not share that—or if they did we do not have knowledge of that—until 1988.

In effect, Treasury, specifically the head of intelligence at Treasury, was advised of BCCI's illegal attempt or illegal efforts to take over First American, and simply did not pass that information on to the Fed.

I appreciate you have not had a chance to investigate this yet; that you do not know that them gaining the knowledge in 1985 is a fact; or that they failed to pass it on until 1988 is a fact. But I am hoping that you would advise us whether or not that apparent fail-

ure to pass on vital information concerns you and whether or not you think it is worthy of investigation?

Mr. BARR. As I said yesterday, I do want a postmortem done on how these investigations were handled by the Government in the past, because I do not want these mistakes repeated if we can avoid them. So I do want them reviewed.

The word "investigate" sounds a little as if we are suspicious of some kind of wrongdoing and while we will track down all allegations of wrongdoing, I am not prepared at this time to ascribe wrongdoing on the part of anybody in the CIA or the Treasury Department in that episode. But I do want the whole matter looked at.

Now, another issue to be assessed involves the CIA information: When it got to the Fed, and the extent to which the Fed would have been further along than it ultimately was if it had received it sooner.

Senator BROWN. Well, I can appreciate the reluctance to reach a conclusion before you have had either an inquiry, a review, or an investigation. But what bothered me in hearing Mr. Kerr, of the CIA, talk about this, was that the initial response we got from them was that they did not really recognize that they had done anything wrong by not telling the Fed. And were not really sure that they would pinpoint who made the mistake and that there was even a mistake made.

I guess my question is, If indeed it turns out that someone at the Treasury was advised in 1985 that BCCI was illegally taking over First American, or illegally had taken over First American, that official did, in fact, fail to advise the Fed of that, is that something you think, given those facts, you think deserves a followup, or further action by Justice?

Mr. BARR. Well, first, Treasury also, I am sure, is looking into the who-struck-John of the last several years on this case. But generally, I think we have to remember that we have fostered in the CIA an Agency that is supposed to stay out of domestic law enforcement issues. And it normally does not think of itself as part of the law enforcement community and the process of using intelligence information, foreign intelligence information for law enforcement purposes, and the interface of intelligence activities and law enforcement activities is a very complicated matter, as I am sure you know.

And it has only been in the last few years that we have been working out procedures and thinking our way through how to use intelligence better for law enforcement. A lot of this has come about in the drug war, for example.

I think—and I am just speaking now of—

The CHAIRMAN. Excuse me, when you say the last few years, you mean the last decade, do you not?

Mr. BARR. The last decade, but I think we have made a lot more progress just in the last few years.

The CHAIRMAN. What do you mean by few years?

Before this, because it is relevant to this BCCI investigation.

Mr. BARR. Well, you know, there has been progress, but I think the most significant progress has been in the last 3 or 4 years.

The CHAIRMAN. Good, that is all I wanted to know, just what you meant by few.

Mr. BARR. The—I sort of lost my train of thought there. What I think is remarkable or maybe should not be remarkable is the CIA did get this information and did make an effort to pass it on to the people they thought were the responsible officials.

And it did not get to the Fed and my understanding is that it did not get to the Department of Justice, and we have been setting up structures and interagency groups to try to encourage more exchange of intelligence information among agencies.

So I think we can learn from this but the fact of the matter is that the CIA got some information and passed it along to the people they thought should get it.

Senator BROWN. The concern I had was the CIA's not recognizing that maybe the Fed had an interest in this and I think they thought that through again and the reflection indicated they would agree the Fed is the agency that should be on the list to get this kind of information.

The other concern I have, and it is one that I hope you will look at, is whether or not someone at Treasury was given this information and sat on it for 3 years which appears to be the case, and at least it is my hope that that is an area that you will be reviewing, whatever the appropriate term is, to see if, indeed, someone covered up or someone simply failed to act.

In that regard though, I would be interested in your thoughts regarding what kind of standard is appropriate in determining what evidence should be passed on. When Justice does an investigation or Treasury, what kind of guideline should be appropriate? In the current case, Justice has been working on the BCCI affair for some time. At what point does Justice share their information with the Fed?

Mr. BARR. At the point where we believe we can share without jeopardizing some other investigation, criminal investigation, that we are carrying out and where we have reason to believe that the information may assist the Fed in their regulatory responsibilities.

Senator BROWN. So, for example, the effort that you mentioned yesterday, the undercover operation, where you have an undercover operation in that evidence disseminating information about that could jeopardize a criminal prosecution, it would—

Mr. BARR. And the safety of the undercover agent.

Senator BROWN. I would assume that simply ownership of BCCI might fall into a different category, would it not, where that is primarily regulatory in nature?

Mr. BARR. I am not sure what you are saying, what you are asking.

Senator BROWN. Well, in thinking about the problem I could well appreciate why it would be inappropriate to pass on information about the money laundering and so on because you are in the process of conducting an investigation, or agencies of the Federal Government were in the process of conducting an undercover investigation, and sharing that information could well jeopardize the lives and the safety of people involved.

On the other hand it struck me that information that had come to the Treasury—not Justice, or at least not Justice in 1985, as

near as I can tell—that indicated BCCI was, indeed, buying First American, it struck me that that kind of information probably should fall under a different standard. That holding that information back would not necessarily relate to any investigation, but would relate to strictly the regulatory function performed by the Fed.

Mr. BARR. So you are talking about whether Customs and IRS agents working on the money laundering should have passed along information sooner to the Fed?

Senator BROWN. Well, frankly I—others may come to different conclusions—but my own impression is that that is a good example of an area where it is appropriate not to blow the cover of those agents, where it is clearly a case you need to protect the individuals involved and the investigation involved.

Now, that is simply my impression and you have others that deal much more closely with it than I. On the other hand, the information that BCCI was buying out or had bought out First American, at least strikes me as an area where the information, indeed, ought to be passed on, that it is primarily regulatory in its impact.

Mr. BARR. Well, I think that the—and again, I can only give you my preliminary impression because I have not, as I said, immersed myself in all the details of this yet—but my general impression is that the Fed, at this time, was aware of corporate rumor, gossip, suggestions, you name it, that BCCI was involved in the takeover of First American.

I do not want to put myself in the heads of the Customs and the IRS agents who were involved in the money-laundering case and the ones who were responsible for maintaining the integrity of the undercover investigation that was going on, but I really wonder whether they could have passed along any meaningful information to the Fed, prior to the takedown of the undercover investigation.

Because part of the use of information would involve who the source is and what they said and, you know, where they fit into the landscape, and why is this somehow evidentiary, why does this carry any evidentiary weight? And I do not think those attendant facts could have been transmitted to the Fed, or, you know, I question whether they could have been transmitted to the Fed without compromising the integrity of the undercover investigation.

And I think soon after the undercover investigation was taken down, the information was transmitted, not in as formal a way as it probably should have been, but it was transmitted.

Senator BROWN. My own view, what is important here is not did someone act properly or improperly at the time? Clearly these sort of things took place on someone else's watch. But I do think that what is relevant, perhaps to this committee's inquiry, is the fact that you will be conducting at least a review of what went on here. I think that is important because it indicates a willingness on your part to look at problems and try and correct them.

And as I understand your testimony, you are willing to take an independent look at what has happened here.

Mr. BARR. That is correct.

Senator BROWN. Thank you.

The CHAIRMAN. Before I yield to my friend from Illinois. The line of questioning that Senator Brown just pursued with regard to the

CIA passing on information to Treasury, do you know, and can you state with certainty that the Justice Department was unaware of the very information that the CIA passed on to Treasury? Can you affirm for us that the Justice Department knew nothing about that information in a contemporaneous timeframe?

Mr. BARR. I am told that at this stage we have no information that these CIA reports got to the Department of Justice. Right now, I do not think that we got the reports, the CIA reports. But I do not think that we have completed our review.

The CHAIRMAN. To the best of your information, the CIA reports did not find their way to the Justice Department?

Mr. BARR. That is the best information I have. Until recently.

The CHAIRMAN. Yes, I meant contemporaneously, back then.

Mr. BARR. Yes, right.

The CHAIRMAN. All right, thank you very much.

Senator SIMON. Thank you, Mr. Chairman.

You are getting down toward the end here, Mr. Barr.

First, perhaps a softball—

The CHAIRMAN. If I could interrupt, what we will do is we will break after the questioning of the Senator from Illinois and we will break for an hour for lunch.

Senator SIMON. First a softball question, but I think an important one. I was pleased with your response yesterday that politics has no place in law enforcement. The Legal Times has this paragraph in an article, "Sources familiar with Barr suggest that he shares Thornburgh's belief that the Attorney General owes allegiance to the President, and to the people, second."

They leave out the Constitution and the law in that equation. Just your reaction to that statement here.

Mr. BARR. I think the Attorney General owes allegiance to the Constitution and the law above all else.

Senator SIMON. And in the process he or she will serve the people and the President well?

Mr. BARR. That is correct.

Senator SIMON. All right.

Shifting to another area, you answered Senator Metzenbaum on *Roe v. Wade* that you differ with that decision and while I disagree with your viewpoint, I respect the candor of that viewpoint. The *Rust v. Sullivan* decision involves much more than the abortion question. It involves the freedom of speech question.

I held a hearing on the *Rust v. Sullivan* question and Leslie Southwick of the Justice Department testified. In his prepared statement he said this: "In a sense when the government funds a certain view, the government, itself, is speaking. It, therefore, may constitutionally determine what may be said."

Now, that is a fairly sweeping statement. And I do not know whether that was cleared with anyone or not. But let me take that statement, do you believe that, for example, when the Federal Government funds libraries through the Libraries Services and Construction Act, that we have any right to say to a library, since we fund the library in part, what books a library may have?

Mr. BARR. I do not think so. I think that would be an unconstitutional condition where restrictions were being placed on the recipi-

ent of funds limiting their constitutional rights solely as a condition of receiving the funds.

Senator SIMON. And how do you distinguish between that and the *Rust v. Sullivan* decision?

Mr. BARR. I think in some cases the distinction may be clear. In others I think these issues can get fairly knotty and the lines can be difficult, as in many areas of the law.

I think it is important to recognize that the Department in the *Rust* case was serving as the Nation's litigator. We were defending regulations promulgated by another agency. We defend statutes, we defend regulations put out by others.

Now, the justification for the regulations was that these were not restrictions on the recipient, they were restrictions on the use of funds. And a lot of clear cases, hypothetical cases that would fall on one side of the line, where you would say, look, if the Government is going to spend money on a particular activity, you can ensure that the money that goes into that activity is restricted to that activity.

If people engaged in it want to do something else, they can do something else on their own time, but as long as they are spending the taxpayers' money they are going to do what the Government is spending the money to accomplish.

And you can go through a series of hypotheticals and some would fall more clearly on one side of the line. Others, then, start looking more like restrictions on the recipient rather than restrictions on the funds.

And that is where a question arises as to unconstitutional conditions. The Department of Justice argued that this was a restriction on funds, and that the recipients could engage in abortion-related activity provided it was not part of the same family planning program that the Government was funding.

That was a regulation which interpreted a statute passed by Congress and that statute used language that was frankly ambiguous, I think. I think any fair-minded person would have to say that the language was ambiguous in the statute.

The statute said none of the funds shall be used in a program that supports abortion as a method of family planning. That is a restriction. Congress can always change the law if it disagrees with the way an agency has interpreted or wants to clarify exactly how they would want the program run.

But, anyway, the Department of Justice's role in *Rust* was to defend this regulation. I think it made a sound argument that this was not a restriction on the recipient, but a restriction on the use of funds. And that position ultimately prevailed, and Congress, I believe, is in the process of readdressing the issue and working its will on it.

Senator SIMON. Do you automatically defend any regulation—if you think HHS or Department of Education has adopted a regulation that you believe is unconstitutional, would you automatically defend that even if you believe it is unconstitutional?

Mr. BARR. No. In fact, I have told agencies I wouldn't defend regulations, not only if they raise constitutional questions, but if I don't think the regulation is consistent with Congress' intent. If the statute requires a certain action and if a regulation in my view

is not consistent with the statute, then there is a legal problem with it.

Here I think that the arguments supporting the regulations were very strong because they ultimately prevailed in the Supreme Court. So I don't think it was a frivolous argument.

Senator SIMON. When you talk about restrictions of engaging in activities, it seems to me that engaging in activities and expressing opinions are—you know, there is a clear division there, and while you say the Court decided, and it did in a 5-to-4 decision, my own feeling is that we have stepped over the bounds in terms of restriction of speech. And I would hope the Justice Department under your leadership would be sensitive in that area.

Mr. BARR. I believe strongly—I am very concerned about the Government using the power of the purse and money as leverage to get people to surrender their constitutional rights. So I am always concerned about unconstitutional conditions being imposed. And I will be sensitive to that issue.

Senator SIMON. I thank you.

Let me shift over to the Inslaw matter that I am sure you are familiar with. Inslaw is a small, Washington-based software company. In a Federal bankruptcy court suit, Judge George Bason found the Justice Department used—and I am quoting him—"trickery, fraud, and deceit" to take Inslaw's property and awarded \$7 million in damages to Inslaw. The court of appeals set aside that ruling on the technical basis that bankruptcy courts have no power, without making any comment on the specifics of the case.

One of your predecessors, Elliot Richardson, wrote in the New York Times. Let me just read here a couple of paragraphs.

The new claims alleged that Earl Brian, California health secretary under Governor Ronald Reagan and a friend of Attorney General Edwin Meese 3d, was linked to a scheme to take Inslaw's stolen software and use it to gain the inside track on a \$250 million contract to automate Justice Department litigation divisions.

(In Mr. Meese's confirmation fight, it was revealed that Ursula Meese, his wife, had borrowed money to buy stock in Biotech Capital Corporation, of which Dr. Brian was the controlling shareholder. Biotech controlled Hadron, Inc., a computer company that aggressively tried to buy Inslaw.)

Evidence to support the more serious accusations came from 30 people, including Justice Department sources. I long ago gave the names of most of the 30 to Mr. Meese's successor as Attorney General, Dick Thornburgh. But the Department contacted only one of them, a New York judge.

Meanwhile, the Department has resisted congressional investigations. The Senate Permanent Subcommittee on Investigations staff reported that its inquiry into Inslaw's charges had been "hampered by the Department's lack of cooperation" and that it had found employees "who desired to speak to the subcommittee, but who chose not to out of fear for their jobs."

The Department also hindered the interrogation of employees and resisted requests for documents by the House Judiciary Committee and its chairman, Representative Jack Brooks. Under subpoena, Mr. Thornburgh produced many files but the Department said that a volume containing key documents was missing.

In letters to Mr. Thornburgh in 1988 and 1989, I argued for the appointment of an independent counsel. * * * it became obvious that Mr. Thornburgh did not intend to reply or act * * *

The first question in this connection is: Do you feel that an appointment of a special prosecutor is necessary or is desirable?

Mr. BARR. I don't think appointment of an independent prosecutor at this point is either necessary or desirable. I think that the heart of this, it appears to me, is a contract claim against the United States, against the Department of Justice as an agency.

And my general view is that claims should be litigated in court, and if people have evidence, they should go to court and prove their case.

But this case has gone on for many years with layer after layer of allegations, some of them strange, and there have been a series of investigations, not only internal in the Department of Justice but, as you mentioned, Hill oversight investigations. And I am not aware of any impropriety ever having been established.

However, I am interested, as this case goes on and on, to get to the bottom of it and bring it to some kind of resolution. And so I have asked a distinguished retired Federal judge, Nicholas Bua, who I think you probably know——

Senator SIMON. I know him. He is a distinguished judge.

Mr. BARR. An exceptional reputation. He was appointed by President Carter to the district court. He served on the district court for 14 years, and he was a State court judge for 12 years before that, a tremendous reputation in the Northern District of Illinois. I have asked him to serve as a special counsel to me and do a complete top-to-bottom review of the case and let me know what he thinks, if anything, should be done further by the Attorney General.

Senator SIMON. I applaud that appointment and I assume he will have your full cooperation in terms of missing documents or anything else.

Mr. BARR. He has carte blanche, full cooperation, full support. He can select any support he wants.

Senator SIMON. I appreciate that. I would like to put the Elliot Richardson column in the record, if I could, Mr. Chairman.

The CHAIRMAN. Without objection.

[The article follows:]

The New York Times

THE NEW YORK TIMES OP-ED MONDAY, OCTOBER 21, 1991

A17

A High-Tech Watergate

By Elliot L. Richardson

A former federal prosecutor, Massachusetts attorney general and U.S. Attorney General, I don't have to be told that the appointment of a special prosecutor is justified only in exceptional circumstances. Why, then, do I believe it should be done in the case of Inslaw Inc., a small Washington-based software company? Let me explain.

Inslaw's principal asset is a highly efficient computer program that keeps track of large numbers of legal cases. In 1982, the company contracted with the Justice Department to install this system, called Promis, in 15 U.S. Attorneys' offices. A year later, however, the department began to raise sham disputes about Inslaw's costs and performance and then refused to withhold payments. The company was forced into bankruptcy after it had installed the system in 15 U.S. Attorneys' offices. Meanwhile, the Justice Department copied the software and put it in other offices.

As one of Inslaw's lawyers, I advised its owners, William and Nancy Hamilton, to sue the department in Federal bankruptcy court. In September 1991, the judge, George Bason, found that the Justice Department used "trickery, fraud and deceit" to take Inslaw's property. He awarded Inslaw more than \$7 million in damages for the stolen copies of Promis. Soon thereafter, a panel headed by a former department official recommended that Judge Bason not be reappointed. He was replaced by a Justice Department lawyer in violation of the Inslaw case.

An intermediate court later affirmed Judge Bason's opinion. Through the U.S. Court of Appeals set this ruling aside in May of this year on the ground that bankruptcy courts have no power to try a case like Inslaw's. It did not disturb the conclusion that "the Government acted willfully and fraudulently to obtain property that it was not entitled to under the contract." Inslaw, which reorganized under Chapter 11, asked the Supreme Court to review the Court of Appeals decision.

After the first court's judgment, a number of prominent members of the Justice Department expressed their disapproval. The Hamiltons thought their problems were the result of a vendetta by a department official, C. Madison Brewer, whom Mr. Hamilton had dismissed from Inslaw several years before. How else to explain why a simple contract dispute turned into a vicious campaign to ruin a small company and take its prize possessions?

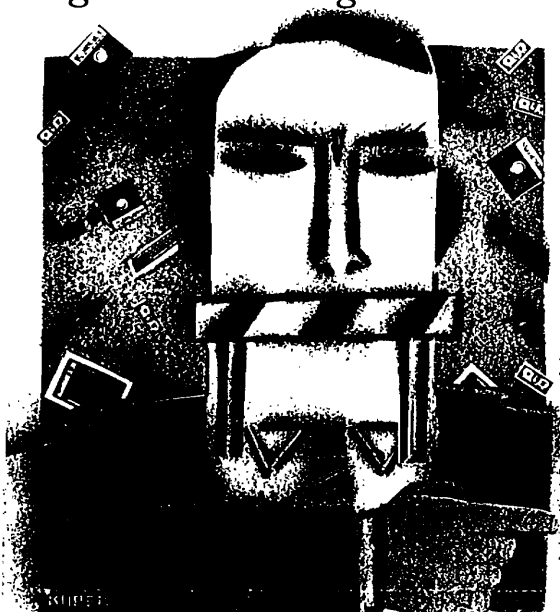
The new claims alleged that Earl Brien, California health secretary under Gov. Ronald Reagan and a friend of Attorney General Edwin Meese III, was linked to a scheme to take Inslaw's stolen software and use it to gain the inside track on a \$250 million contract to automate Justice Department litigation divisions.

(In Mr. Meese's confirmation fight, it was revealed that Inslaw Meese, his wife, had borrowed money to buy stock in Ralston Capital Corporation, of which Dr. Brien was the controlling shareholder. Brien's successor, Madison Inc., a computer company that aggressively tried to buy Inslaw.)

Evidence to support the most serious accusations came from 30 people, including Justice Department sources. They gave the names of most of the 30 to Mr. Meese's successor as Attorney General, Dick Thornburgh. But the department contacted only one of them, a New York judge.

Meanwhile, the department has retained Congressional investigators. The Senate Permanent Subcommittee

found, I. Richardson, a Washington lawyer, as Attorney General in the Nixon Administration.



on investigations staff reported that its inquiry into Inslaw's charges had been "hampered by the department's lack of cooperation" and that it had found employees "who desired to speak to the subcommittee, but who chose not to out of fear for their jobs."

The department also hindered the investigation of employees and refused requests for documents by the House Judiciary Committee and its chairman, Representative Jack Brooks. Under subpoena, Mr. Thornburgh produced many, but the department said the documents containing key documents was missing.

In May 1984, Ronald L. Grand, chief investigator for the Senate Judiciary Committee, told the Hamiltons, and confirmed to their lawyers, that he had a trusted Justice Department source who, as Mr. L. Grand quoted him, said that the Inslaw case was "a lot dirtier for the Department of Justice than Watergate had been, both in its breadth and its depth." Mr. L. Grand now says he and his friend were only discussing rumors.

Then, in 1990, the Hamiltons received a phone call from Michael Richardson, a noted Justice character believed by some knowledgeable sources to have CIA connections. Mr. Richardson claimed that the Justice Department stole the Promis software as part of a payoff to Dr. Brien for helping to get some Iranian leaders to release the so-called October surprise, the alleged plot by the Reagan campaign in 1980 to conspire with Iranian agents to hold up release of the American Embassy hostages until after the election. Mr. Richardson is now in jail in Tacoma, Wash., awaiting trial on drug charges, which

The Attorney General should name a special prosecutor in the Inslaw case.

he claims are trumped up. Since that first Richardson phone call, he and other informants from the world of covert operations have talked to the Hamiltons, the Judiciary Committee staff, several reporters and Inslaw's lawyers, including me. These informants, in addition to confirming and supplementing Mr. Richardson's statements, claim that scores of foreign governments now have Promis. In fact, these informants say, was given the chance to sell the software as a reward for his services in the October surprise. Dr. Brien denies all of this.

The reported sales allegedly had two aims. One was to generate income for covert operations not authorized by Congress. The second was to supply foreign intelligence agencies with a software system that would make it easier for U.S. eavesdroppers to read intercepted signals.

These informants are not what a lawyer might consider ideal witnesses, but the picture that emerges from the individual statements is remarkably detailed and consistent, all the more so because these people are not close associates of one another. It seems unlikely that so complex a story could have been made up, memorized all at once and cleverly coordinated. It is plausible, moreover, that preventing revelation about the theft and secret sale of Inslaw's property to foreign intelligence agencies was the reason for Mr. Thornburgh's efforts. It is inexplicable reluctance to conduct a thorough investigation.

Although prepared not to believe a

lot they told him, Elanus Cavallaro, a freelance journalist, got many leads from the same informants. The circumstances of his death in August in Washington, W.Va., have been increased the importance of finding out how much of what they have said to him and others is true. Mr. Cavallaro told friends that he had evidence linking Inslaw to the Iran contra affair and the October surprise, and was going to West Virginia to meet a source to receive the final piece of proof.

He was found dead with his wrists and arms slashed 12 times. The Martinsburg police ruled it a suicide, and allowed his body to be embalmed before his family was notified of his death. His homicide was missing. I believe he was murdered, but even if that is not true, it is a possibility. It is a possibility with such sinister implications as to demand a serious effort to discover the truth.

This is not the first occasion I have had to think about the need for an independent investigation. I had been a member of the Nixon Administration from the beginning when I was nominated as Attorney General in 1971. Public confidence in the integrity of the Saragat investigation could have been insured, I thought, by entrusting it to someone who had no such position in connection to the White House. In the Inslaw case the charges against the Justice Department make the issue even more important.

When the Washington Special Action Committee began its inquiry, and that of the Reagan's involvement are not as strong as those that now point to a widespread conspiracy implicating lesser Government officials in the theft of Inslaw's technology.

The newly designated Attorney General, William P. Barr, has assured me that he will address my concerns regarding the Inslaw case. That it will come to justice. But the question of whether the department should appoint a special prosecutor is not one it should decide. It is a matter for the executive branch, as well as from Congress and the public should also be heard.

Senator SIMON. I see I am just about out of time here. Let me ask just one final question before that light turns red.

In the process of advice and consent, we have followed the consent side of it. We have not followed the advice side of it very much. You will be working with the President if there is another Supreme Court vacancy. My strong feeling is—and it is one that is shared by Senator Simpson, for example—that the President would be wise to get together with a few key members of the Senate and say these are among the people I am considering, to get some input so that we can avoid the kind of acrimony that we have seen in the latest nomination.

Do you have any reactions?

Mr. BARR. That is something I would want to discuss with the President. I really don't have any reaction to it.

Senator SIMON. But when the Constitution says advice and consent with the Senate, what do you think the Constitution means when it says advice?

Mr. BARR. That is interesting. I think the words of the Constitution actually say the President "shall nominate, and * * * with the advice and consent of the Senate, shall appoint * * *". So I think the phrase "advice and consent" relates to the ultimate appointment. So I don't think there is a constitutional obligation on the part of the President to consult before nomination. I don't say there is an obligation to. I think historically Presidents have from time to time consulted on various appointments. In fact, on district court and circuit court appointments, there is a very formalized practice of consultation. But that is really a matter of comity and prudential judgment, not a matter of constitutional requirement. That is my view on the law.

Senator SIMON. Let me just say I differ slightly with that view, but whether the Constitution mandates it or not, it seems to me it would be prudent and wise to follow a course that is less confrontational, so that everyone wins in the process.

Thank you very much.

Mr. BARR. Thank you, Senator.

The CHAIRMAN. Thank you.

As I indicated earlier, we will now break until 1:30.

[Whereupon, at 12:20 p.m., the committee recessed, to reconvene at 1:30 p.m., the same day.]

AFTERNOON SESSION

Senator LEAHY [presiding]. Mr. Barr, you can see the situation you have gotten yourself into when this has degenerated to the point where I am now the acting chairman. But welcome back to you and to your family. Again, as each one of us has done, we compliment your family for both their interest and their patience. They should understand that this is, after all, of historic importance, not just for the Barr family but obviously for the country.

Senator Kohl, I understand that you are next, and I yield to you.

Senator KOHL. Thank you very much, Senator Leahy.

Mr. Barr, first of all, I would like to commend you for your statement yesterday to Senator Kennedy, on the record, that you support the Brady bill and Senator DeConcini's assault weapons legis-

lation. We have all worked hard and long on that crime bill with these particular provisions, and we appreciate the fact that you support it. And for those like myself and Senator Metzenbaum and others, we are very much indebted to you for your support, which we know has some conditions attached to it but, nevertheless, is very sincere and perhaps even unequivocal.

I also appreciate the fact that you are as frank as you are and have been on your opinions with respect to *Roe v. Wade*. Even though some of us disagree, the fact that you are forthcoming and honest and state your position right up front is very impressive.

I would like to ask you about your role as the Attorney General in relationship to the President and the people of this country. On the one hand, the President is in some respects your client; on the other hand, the people of this country believe, Mr. Barr, that you are first and foremost their advocate. I think if we made a poll, conducted a poll in this country and asked the people of this country what they think about the Attorney General in a generic way, I think they think about him as, No. 1, first and foremost, their advocate when it comes to justice in this country.

But, of course, we know that you also have another responsibility and another loyalty, and that is to the President. How do you balance these two roles?

Mr. BARR. I think the starting point for understanding the Attorney General's role is the fact that the law stands above everything. Everybody is subordinate to the law, and we are a government of laws. Then the Attorney General plays several roles with respect to the law.

First, I think the Attorney General serves as a legal counselor to the President and the Cabinet in explaining the law. In fact, the first Judiciary Act of 1789 specifically assigned to the Attorney General responsibility for providing legal advice to the President and the Cabinet. So I think one role the Attorney General plays is providing legal advice, explaining what the law is. In that role, I think the Attorney General has an obligation, like any lawyer has an obligation, to tell it like it is, to provide accurate legal advice, good-faith effort to describe what the law is.

The second role is different. That is administering the law, enforcing the law, and that is what I think is the most fragile, sensitive, and important role of the Attorney General, because that is the area where the Attorney General's allegiance has to be to the law above all. And that is not to say that the first role doesn't require allegiance to the law, but it is in the second role where the tension is sometimes said to exist between politics and doing justice.

As I said in my opening statement, that is the area where the Attorney General must keep the administration of justice away from and above politics.

The third role is a policy role. There are many questions that arise, the results of which are not dictated by the law. For example, how much resources should we seek or put into this program or that program, or do we need new laws, or should we amend laws? These are policy issues. And that is where the Attorney General serves as a policy adviser within the executive branch and, like any other Cabinet Secretary, offers his advice. It may be ac-

cepted; it may be rejected. But in that capacity as a policy adviser, ultimately he takes the direction of the President and carries out the program. So those are different roles the Attorney General plays.

Senator KOHL. What do you do in cases where the interests of the President and the people are divergent, as, for example, in Watergate? What is the role of the Attorney General in a situation of that sort?

Mr. BARR. I think the role of the Attorney General is to adhere to the law. That is where the allegiance of all Government officials should lie, and the Attorney General should not do anything or countenance anything that is a violation of law.

Senator KOHL. Who was the Attorney General during Watergate?

Mr. BARR. I think there were a series during the whole incident.

Senator LEAHY. It depended on what time of day it was at one point.

Senator KOHL. Wasn't Mitchell there at one time, or was he gone already?

Mr. BARR. He was there.

Senator KOHL. How would you assess the conduct of the Attorneys General during Watergate?

Mr. BARR. I would just rather stand on the general statement that an Attorney General's obligation is to uphold the law.

Senator KOHL. Yes, but if you can give us some indication as to how, in a practical way as opposed to a theoretical way, you assess the Attorneys General during Watergate. Did the Attorneys General conduct themselves in ways that you would say fit your general concept of how it works, or would you say that they did not?

Mr. BARR. Well, if an Attorney General, any Attorney General in Watergate countenanced violations of the law or was involved in violations of the law himself, then that was a betrayal of his public trust.

Senator KOHL. Are you qualified to make a judgment with respect to whether or not you think they were in violation of the laws?

Mr. BARR. Whatever the record shows. If people have been found to have violated the law, then that means they betrayed their public trust.

Senator KOHL. OK. Griffin Bell once said as Attorney General, and I quote, "If you bow to Congress, you can do just as much damage as if you are not independent of the White House." Do you have a comment on that?

Mr. BARR. I am sorry. Could you repeat that?

Senator KOHL. "If you bow too much to Congress, you can do just as much damage as if you are not independent of the White House."

Mr. BARR. I believe that is true. I think any political interference defeats the process and taints the administration of justice.

Senator KOHL. OK. I would like to talk about juvenile justice for just a minute. As you know, I am chairman of the Juvenile Justice Subcommittee. For a decade, the Attorney General's office has not been supportive of the juvenile justice effort made by Congress. I say that by way of the funding. The funding recommendation from

the administration, which I presume comes as a result of a recommendation from the Attorney General's office, has been zero, except for this past year. In this past year, the funding recommendation from the administration was \$7.5 million. Congress has not accepted that. As you know, our current funding level is about \$75 million, still quite inadequate.

What we try, and do, in juvenile justice is to get at what you have been talking about as so important in our society, the root causes of the problems we have in our society, and in this case with respect to our young people. Certainly we are not perfect, but what we are trying to do is find out how we can, at the governmental level, do something to improve the conditions, the quality of life, the conduct, and hopefully the future of young kids who get into trouble; we strive to find out why and what can we do to improve it.

Now, I presume that that effort has your—I won't even say qualified support; I will say your total support.

Mr. BARR. Let me give you a pragmatic answer. I support the program. The administration policy, however, is that it should not be funded by the Federal Government, but that the State should now pick up these kinds of expenses. That is obviously not a policy that has made much headway on Capitol Hill. As you say, I think we have been seeking to zero it out for over a decade.

That creates a big problem for me in the real world because, if we send up a budget that has zero after juvenile justice, that forces Congress to take the money from my account elsewhere and fund that program. Therefore, I don't like sending budgets up to the Hill that zero out programs in the Department of Justice's budget with no hope of persuading Congress that it is better not to fund the program. That takes money right out of the pocket of other Department of Justice components. So that is my answer.

Senator KOHL. Well, now, just hold on. What you are saying is that the only reason, or the major reason that you might support a funding level of whatever for juvenile justice is because if you don't it is going to be taken out of your hide in another part of your budget?

Mr. BARR. No. What I am saying is I believe in these programs. These are programs, just like the RISS Program that Senator Thurmond mentioned. These are important things.

Senator KOHL. Yes.

Mr. BARR. And I think we have to be doing more in the area of education and working with youth as a nation. The question is: Which particular program is going to be paid for by which particular government agency, or what part of government? Is it a State program or a Federal program at this point?

It has been the administration's policy for over a decade that these costs should now be borne by the States. Now, States are in a budgetary difficulty right now, as we all know. It is unlikely that they will pick up the expenses, and it is very unlikely that Congress is going to zero out that program. I want the program to continue. In my view, the best way to fund the program right now is in the Federal budget, because otherwise—that is the only way the program is going to continue, and it will be funded in the Federal budget.

Senator KOHL. Could I presume from what you have said, and from what I heard you say when we had our discussion prior to today in my office, that you would support some modest increase in funding for juvenile justice, in lieu of your convictions with respect to the needs in this country and what it is we can do. Right now the funding level is \$75 million, which you know is not a number of any significance or consequence for 50 States.

Would you support some modest level of increase in funding for juvenile justice in addition to working with me next year on reauthorization of juvenile justice?

Mr. BARR. I would support—it is hard to project what the budget circumstances will be, but I would support modest increases in programs in this area. Whether they would be under juvenile justice or part of the weed-and-seed program or juvenile justice money that is dedicated to the weed-and-seed program, we could work out. But the underlying concept is one that I would support.

Senator KOHL. That is good. Just let me say I look forward to our working together. And I mean this sincerely, first, because I think you do feel this way and, second, because you are a very good person to work with. I have made that judgment, and I believe it is true. I look forward to having a constructive relationship with you, and I believe we will in this area in which I have responsibility—juvenile justice. I am very pleased about that.

Mr. BARR. Thank you, Senator.

Senator KOHL. I thank you.

I would just like to make a request from you regarding weed-and-seed. Earlier in response to Senator Specter, you spoke about the need to combat criminal behavior at its roots as opposed to only treating its symptoms. During our meeting a few weeks ago, you spoke of a comprehensive approach, which I appreciate, involving law enforcement, government, social services, and community activities.

Since our conversation, my staff has been in contact with your staff at the Justice Department and with respect to the weed-and-seed program. There is a strong desire and a need for a weed-and-seed effort in Madison, WI, which is a very fine city, a city in which the drug problem and the crimes associated with drugs have not yet gotten a firm foothold. Not at all is there a firm foothold with respect to these problems.

But the community leaders and the citizens are concerned about rising crime, and they are excited about weed-and-seed. They feel it can have a very constructive impact on the community. Might I hope that the people in the Justice Department would be willing at least to discuss the possibility of a weed-and-seed effort in Madison, WI?

Mr. BARR. Absolutely.

Senator KOHL. Thank you.

Mr. BARR. We would be pleased to do that.

Senator KOHL. Thank you very much.

Senator Leahy, thank you.

Senator LEAHY. When you started talking about weed-and-seed, I thought maybe we were back at the Agriculture Committee.

Senator KOHL. No, that is rag-and-tag. [Laughter.]

Senator LEAHY. The Senator from Wisconsin has been a forceful advocate on the program and has a great deal of support on this committee.

I understand Senator Grassley is next.

Senator GRASSLEY. Thank you.

Senator LEAHY. I yield to the Senator from Iowa.

Senator GRASSLEY. Thank you very much.

The Justice Department has been very active in the fight against terrorism. I think it plays a very important role, so I have some questions along that line. There have been press reports that the administration may grant visas to PLO officials in the coming months. As I understand the Immigration Act of 1990, PLO officials are specifically defined to be excludable from the United States.

Will you ensure that the Immigration Act is followed and that those who engage in terrorist activities will not be admitted to the United States?

Mr. BARR. I will commit to enforcing the law. I am not familiar with the terms of that law. I will enforce it.

Senator GRASSLEY. OK. That is a satisfactory answer.

We are coming up to the third anniversary of the Pan Am 103 tragedy, and yet we have had no indictments to this date. Could you tell us something about the progress of the investigation and what the prospects for an indictment are?

Mr. BARR. I am very satisfied with the progress of the investigation, but other than that, I am afraid I can't say anything at this time.

Senator GRASSLEY. And that is because of the sensitivity of the issue and your desire not to go public with information? Is that what you are saying?

Mr. BARR. Right. It is an open criminal investigation, and I cannot discuss the timing of any possible indictment.

Senator GRASSLEY. OK. Well, since I don't want to——

Mr. BARR. But I think that——

Senator GRASSLEY. I don't want to jeopardize it. If you have a feeling that you are making progress in that area, I will be——

Mr. BARR. We are making great progress, and I think the American people will ultimately be very proud of the job done by the Federal agencies involved.

Senator GRASSLEY. On another point, this is something that I picked up in our newspapers that I want to discuss with you. It is a visit to the United States of two Syrian generals. They were hosted by the United States Information Agency and taken on tours of facilities of the Drug Enforcement Agency at a time when I sense that Syria is known as one of the biggest traffickers of heroin in the country.

Could you tell me why these individuals were given such red-carpet treatment, and why are we showing off our antidrug efforts to people who are known to be pushing heroin and other drug trafficking?

Mr. BARR. I would have to look into that, Senator. I don't know the answer.

Senator GRASSLEY. You would submit an answer in writing?

Mr. BARR. Certainly.

[Responses to all the written questions of committee members can be found in the appendix.]

Senator GRASSLEY. One other point, and here, admittedly, I have even less information but I hope that you can shed some light on it. I have learned that a well-known Syrian terrorist, who goes by the name of Yosef Heider, visited the United States. He had been implicated as a payoff person in a number of terrorist activities. I can't get confirmation on whether or not he was in the United States in late September. The FBI seems to deny that Heider was in the United States.

Do you know if Heider was allowed entry into the United States?

Mr. BARR. I don't know the answer to that.

Senator GRASSLEY. Well, OK. Let me ask you this, then: Let's suppose Heider was in the United States. Could you comment on what policy could possibly be served by letting an individual like Heider into the United States, following my description of him—I think it is an accurate description—unless, of course, if when he were in the country, while he was here he was arrested and prosecuted for crimes that he has committed?

Mr. BARR. Senator, I don't want to speculate about a circumstance I don't know about. I would want to know the facts. I would want to know more about the person and more about the circumstances of his being here, if he was here.

Senator GRASSLEY. Well, I would appreciate responses in writing.

Mr. BARR. OK.

Senator GRASSLEY. Let me return to a subject we discussed yesterday, and that is the role of bar associations in the nomination and confirmation of Federal judges. You made clear to my satisfaction your intentions to monitor the objectivity of the ABA in rating judicial nominees, and I thank you for that. But my questioning today is because I am unclear of what you consider appropriate for State and municipal bar associations.

You indicated, if I understood you correctly, that you are considering allowing judicial nominees to cooperate with local bar associations that wish to comment on the nominee's qualifications. Now, I am concerned that such action would give local bar associations too formal a role in the judicial selection process. Private groups may have a right to give their opinion on a nominee, but the role as active participants in the governmental decisionmaking should be limited. We have expressed the limited but acceptable role of the ABA. Now we are talking about whether that acceptable role ought to be extended to other organizations.

Multiple investigations of nominees would be duplicative and I think very time consuming. Such formal involvement by local bar associations would create an undue burden on nominees, by requiring them to cooperate with an unlimited number of interviews and document requests. And as you indicated yesterday, there are already enough deterrents to an attorney submitting herself to judicial confirmation process. I think we ought to be removing those impediments.

It is for that reason that we have had several members of this committee, including Senator Thurmond, Senator Hatch, Senator Simpson, Senator Brown, and myself, write to Attorney General Thornburgh in June commending his policy and expressing our

opinion that State and municipal bar associations not be granted a formal role in the selection and confirmation of Federal judges.

So, could you please clarify your position on the role of local bar associations in the confirmation process? Do you disagree with our position that such groups should not have a formal role in the process, that nominees should not be required to cooperate with redundant investigations by local bar groups?

Senator SIMON. Would my colleague yield to put an addendum onto your question? This question is about formal requirement and formal process. I think part of the question is also whether nominees should be permitted to go to local bar associations or a group like that.

Mr. BARR. As I said yesterday, Senator, I would be very concerned about bringing other bar associations into the prenomination process the way the ABA is involved in that process now, so I share your concerns as you have just laid out. Several of them are ones that I alluded to yesterday.

I, however, am willing to talk to some of the bar associations and find out more about what their position is. Several have suggested to me that their chief complaint is that we are affirmatively barring people from talking to them, and I want to discuss that issue with them.

I would, however, not require, I can certainly say I am not going to require our candidates at this point to talk to other bar associations, but I think that the issue may be whether or not we affirmatively preclude that, and I want to talk to those bar associations and get exactly what their views are and also have a chance to express some of my concerns about what the practical impact of this is and find out more about what their process is. That is where I stand on the issue right now.

Senator GRASSLEY. I guess the only comment or question I would have in regard to what you said—and I do not think you are announcing a change of position, rather that you were just going to look into it—relates to some concerns that members of this committee have.

Let's suppose that you just simply said you were not going to require anybody to meet with local bars, but you had a change of policy that left it more neutral than it currently is. It seems to me that there would be a great deal of pressure, and that that is just the same as saying nominees should meet with local bars, and that the practical end will be that if the nominee does not meet with them, he will have one more nail in his coffin.

Mr. BARR. That is certainly a consideration, but at this point I want to find out more about what they have in mind and also have a chance to talk about some of my concerns. For example, the fact of the matter is that, prior to nomination, we try to keep these things confidential, so I see some logistical problems as well.

But when bar associations such as the City of New York Bar Association and so forth, say they want to meet and talk, I see no problem with talking about it.

Senator GRASSLEY. One last matter, which is not in the way of a question, but just to reaffirm a point. You and I visited yesterday about the extraterritoriality of our antitrust laws, and I think you indicated that you thought that Assistant Attorney General Rill

was looking into that and considering certain possibilities. I have looked into it since you and I talked yesterday, and I can confirm what you said—that more aggressive international enforcement is a direction that the Antitrust Division plans to take if an appropriate case presents itself.

I guess the only admonition I would have for you, as Attorney General and the overseer of what the Antitrust Division does, is that for us to make certain the goals that Vice President Quayle seeks in the work of his Competitiveness Commission, we must ensure that our business has a level playing field with its international competition, and that if our Government doesn't use our antitrust laws as a major tool in this effort, we are losing a wonderful opportunity.

I hope, as Attorney General, without your making any promises to me, because I don't want you to do that, you will give that a careful consideration as a very effective way of accomplishing what this administration hopes to accomplish, and maybe can be accomplished through a Justice Department that cannot be accomplished through commerce, through the Special Trade Representative, and maybe even through the State Department sometimes, because these are laws on the books that we can enforce and they do nothing more than see that the American consumer gets a fair shake. We are entitled to that fair shake, whether it is unfair competition from overseas violation of antitrust law or whether it is an American company doing it.

Thank you.

Mr. BARR. Thank you.

Senator GRASSLEY. Senator Leahy, I am done.

Senator LEAHY. Thank you, Senator Grassley.

Mr. Barr, yesterday, when I was reminded that my time had run out, we were discussing Mr. Rogers. You and I had a private conversation regarding him in the situation.

I will not go into any of the things we discussed privately, for the reasons I told you yesterday, but I had asked you more in the broad sense about the kind of issues that are raised when a high-level White House employee goes straight to representing a target of a major Justice Department investigation only a few weeks after leaving office, and your answer went to the question of whether Mr. Rogers could not have been shown to have violated the law.

President Bush has said a number of times about the avoidance of and even appearance of impropriety, and I commend the President for that, and I have been there, as you have, at different times when he has stated that, both in small gatherings and large gatherings, and I don't think either you or I question the President's concern about that.

But I think the issue raised some other policy questions. The city of Washington has many distinguished attorneys. You were in a law firm with a number of them, and you and I could sit here and list off the top of our heads a couple hundred very distinguished attorneys in this town.

So, I wonder why a wealthy man such as Sheik Kamal would choose a legal unknown like Mr. Rogers, unless it was to obtain political influence. Do you happen to know how he picked Mr. Rogers?

Mr. BARR. No, I don't, Senator.

Senator LEAHY. Has the Justice Department undertaken any independent factual investigation of how or why Mr. Rogers and Sheik Kamal got into the legal arrangement that they got into?

Mr. BARR. No, Senator.

Senator LEAHY. Have you undertaken any independent investigation into possible improper conduct or contact between Rogers and Sheik Kamal or between Rogers and present administration officials?

Mr. BARR. Yes.

Senator LEAHY. You have?

Mr. BARR. Yes.

Senator LEAHY. Is that ongoing?

Mr. BARR. The Department of Justice's review of that matter or investigation of the facts has been completed.

Senator LEAHY. Do you do that independent of the White House counsel, or do you base it on the findings of the White House counsel?

Mr. BARR. We conducted part of the investigation that we felt it was appropriate to conduct ourselves.

Senator LEAHY. Is your final conclusion based on that of the White House counsel, is it to confirm the White House counsel, or is it a conclusion independent of?

Mr. BARR. Could you repeat that? I am not sure what you—

Senator LEAHY. When you say this has been concluded, the Department of Justice investigation, does it reach its own independent determination of whether there was impropriety? Do you reach one that is for the use of the Justice Department?

Mr. BARR. We have not conducted an investigation, our own investigation of contacts with the White House.

Senator LEAHY. Do you then ask questions of the White House, or do you have the White House conduct that kind of investigation?

Mr. BARR. The White House conducted that investigation.

Senator LEAHY. What office in the Department of Justice conducts the investigation, the Justice Department's investigation?

Mr. BARR. OPR conducted part of the inquiry, and the Criminal Division conducted part.

Senator LEAHY. Now, on the question of—

Mr. BARR. You said with respect to the Department.

Senator LEAHY. Pardon?

Mr. BARR. With respect to the Department.

Senator LEAHY. What part of the Department of Justice conducted any of the investigations involving Mr. Rogers?

Mr. BARR. Well, there were certain inquiries and reviews that were undertaken. The word "investigation" sometimes suggests—

Senator LEAHY. Whatever review was done regarding Mr. Rogers, who was—

Mr. BARR. My answer stands.

Senator LEAHY. It is the same?

Mr. BARR. Yes.

Senator LEAHY. Thank you. Now, as far as the contact with White House officials, that the Department of Justice left to the White House counsel to do, is that correct in my understanding?

Mr. BARR. That is correct. That would be normal, and not only normal with the White House, but normal with any agency on an Ethics in Government Act question. There are hundreds of lawyers that leave government at any given period of time, and if they are retained by somebody, the Justice Department doesn't run out and say, gee, so-and-so was retained, maybe there was a violation of the Ethics in Government Act; let's determine whether he worked on the subject at his agency.

Senator LEAHY. Even if something like this was a front-page story involving a major issue like BCCI?

Mr. BARR. Well, as I said the first day, to be fair, Justice has to run according to process and standards, and because there is a story on the front page doesn't mean someone is going to get treated differently. Unless there is some reason to believe that the—normally, what will happen is an agency will contact us and say we have been contacted by an employee about a particular matter and the person left less than a year ago, or they will say so-and-so is representing so-and-so, and we think he may have worked on it. We rely on those kinds of referrals from the agencies. We don't, without any factual predicate, launch investigations ourselves.

Senator LEAHY. In this case, did the White House then come back and tell you the result of their investigation?

Mr. BARR. Yes.

Senator LEAHY. Did they ask for any help by the FBI in doing it, or did they do it all in-house?

Mr. BARR. I think it was done in-house.

Senator LEAHY. They did not ask for anybody, either the FBI or the Department of Justice to aid them?

Mr. BARR. I don't think so.

Senator LEAHY. In their response to you, did they determine whether there had been any improper contact with the White House?

Mr. BARR. Their conclusion, I think it was public knowledge, was that he did not work on BCCI whatsoever at the White House, and that he had no communications with the White House concerning BCCI.

Senator LEAHY. Yesterday, you were asked a number of questions about Judge Kelly and Wichita, and you had said, if I am correct—I have gone back over the notes, I was out at another hearing during part of that, but I understand you said that Judge Kelly should have left the issue of protecting Wichita health clinics to State officials. Is that a fair summary of what you said?

Mr. BARR. That was the position we had taken in the Bray brief, which was filed in April.

Senator LEAHY. And you said further, and this is a quote, "This was not viewed as an abortion issue in the department," is that correct?

Mr. BARR. That is correct.

Senator LEAHY. Now, apart from the legal position, do you accept that interceding on behalf of the protestors was at least widely viewed as a political endorsement of their actions?

Mr. BARR. I cannot speak as to how it was widely viewed. That is the way a lot of newspapers reported it.

Senator LEAHY. There is a troubling in the broader sense that a Federal judge who was able to really enforce the law based on respect for his rulings and the position of the Federal judge. They don't have troops to back it up, they don't have an army or anything else. Considering the fact that a Federal judge must have the force of his moral suasion and legal status, does it trouble you that the Department of Justice would appear to be undercutting that same type of moral authority and legal authority that a Federal judge should have?

Mr. BARR. We wanted to stand by the judge and obey the judge's order, and that is exactly why we instructed the marshals to obey the order, carry out the judge's directions, and make the arrests.

Senator LEAHY. Well, you couldn't tell the marshals to do otherwise, could you? At that point, it was a valid order, it had not been reversed by anybody else. I mean, the Department of Justice couldn't call up a marshal and say the judge has just given you an order which is at least valid on its face, don't follow it. Is that correct?

Mr. BARR. That's true.

Senator LEAHY. Are you sending contradictory signals to the populace at large?

Mr. BARR. What are the contradictory signals?

Senator LEAHY. The impression was that the Department of Justice was stepping in and saying we are going to get rid of that pesky Federal judge's order just as quickly as we can.

Mr. BARR. I don't think that is what the Department of Justice said. We did not become a party. We filed an amicus and we filed a copy of the brief that we had filed 3 to 4 months earlier. We made it public that our marshals were going to carry out the court's orders, and we called on everyone to obey. My impression was, and I can't remember that clearly the sequence of events, but I think for a period of days after that there was no blocking of any of the clinics.

Senator LEAHY. Earlier this year, the FBI came to the Congress and they had a proposal involving telecommunications and computer services. They wanted to give the Government trap doors into private encryption devices. In other words, you could have in your computer system encryption to protect against industrial espionage or even to keep your own files in such a way that is compartmented even within a company, but certainly we have companies, as you know, fax material back and forth or send material from computer to computer that may be of design of their new car, their new whatever, and so they encrypt that, because we found industrial espionage and it is often stolen.

But what the FBI wanted to do was to say if the computer is going to be made, if telecommunications is going to be made, that even though industry would buy them to keep things safe, there should be a trap door in there that would allow the FBI to go into it.

Now, we have heard from the phone companies and from the computer industry and computer scientists and academics and

many others, and they are in an uproar about the proposal's potential impact.

The reason I ask you this question is I understand it ended up on your desk, and a number of agencies, including the FBI and NSA, Commerce, OMB, are involved in discussions over what should be the administration's policy.

How do you proceed with that? Can you give us some idea of how you sift out the obvious law enforcement request the FBI is making, balanced by those who say this is my business, my commercial interest, and I don't want to give a trap door to anybody else, and then others—civil libertarians—who are just concerned about the obvious Big Brother aspects? How do you sift that out?

Mr. BARR. Senator, first let me say this matter is still under review within the executive branch.

Senator LEAHY. I understand.

Mr. BARR. Second, I recall several months ago—or I forgot when you said this proposal surfaced, but at some point I conveyed or I instructed people to convey to you or your staff that nothing was going to happen on this until we came up and had a chance to sit down and talk to you and consult with you before anything went. I don't know if you recall—

Senator LEAHY. Oh, I do indeed. That is why I asked the question. I knew it would be an area that you are familiar with so that I wasn't trying to toss you any kind of trick question. I know that you are one person now who is aware of this.

Mr. BARR. So nothing is going to be coming down the pike by surprise. I will be able to talk to you well before anything is proposed. But as to those details, I would be glad to discuss them either in executive session or privately with you, but I don't want to discuss them in public.

Senator LEAHY. I don't want to go into the obvious law enforcement aspects, and we will have to have and I suspect the Technology and the Law Subcommittee may have a closed-door hearing on that. Certainly some of the Senators who are involved in it, maybe sometime if you are coming up here to talk about it, I can notify some of the other Senators who are interested, and we could do that.

My question was not to ask you to tell us today how you are going to finally work that out but rather more of a process one. Are you making an effort to go to all the different parties involved, not just the obvious, the NSA and the FBI, but the computer manufacturers and those who have civil libertarian concerns about it, the telephone companies and so on?

Mr. BARR. I have been contacted by some private sector interests that have obviously a deep interest in this issue. I am planning to sit down and talk with them and be accessible to them on the issue. But right now it would be premature because I am not sure what direction we are going in, and in a way it would be a real waste of their time to come in when we really haven't formulated our thoughts completely. But once we do get an idea, my plan is to consult with the Hill and to consult with the private sector and see if we can come up with a consensus view. If not, and if there are differences, then we will see where we go from there.

Senator LEAHY. Thank you. I have been intruding. I know Senator Simpson is waiting. But I think that this is also an area that he is interested in, too, and we all want to hear about it. Senator Simpson.

Senator SIMPSON. Thank you, Mr. Chairman, and I thank you for your courtesy.

It is good to have you here, and your very patient family I see is still at your side. It is hard to believe, isn't it?

Mr. BARR. Well, they get out of school by doing this, Senator.

Senator LEAHY. It is the best thing he has going for him, Al.

Mr. BARR. I think at 3:30 they disappear. [Laughter.]

Senator SIMPSON. I see, just like a puff of smoke. Well, anyway, they are very attentive, and it is good to have them here.

We have been talking, and this is my first round of opportunity. Obviously there has been a lot of discussion of BCCI. I think we all anticipated that would come. There have been questions in other streams and branches on other things, but let me just, if we could, establish one fact at the outset concerning the BCCI investigation, which happens to be obviously the most topical.

Is it not correct that the Justice Department is the lead agency for prosecuting BCCI's money-laundering activities and the Federal Reserve is the lead agency responsible for investigating BCCI's illegal ownership of the First American Bank? Is that not correct?

Mr. BARR. That is correct; however, then the Fed, if they come across evidence that may be potentially criminal, then they would refer it to the Department of Justice. The first referral came on January 22, 1991.

Senator SIMPSON. But we have a separation here that takes place, and then if they do find things, then it is referred on to Justice?

Mr. BARR. Correct.

Senator SIMPSON. I think that is something that is not quite clear sometimes.

Now, with regard to the Justice Department's investigation of BCCI's money-laundering activities, may I just review and summarize what you have already told us and ask you if this is correct? In the first indictment in Tampa, FL, two BCCI corporate entities pleaded guilty to money laundering in January 1990, and paid a forfeiture of \$15 million. Then in July 1990, all five BCCI officials who stood trial were convicted, and they received prison terms ranging from 3 years to 12 years. Is that correct?

Mr. BARR. That is correct, after a 7-month trial.

Senator SIMPSON. Then a second indictment was filed in Tampa on September 5, 1991, and in that indictment six BCCI officers, five other individuals, and one corporation were charged with money-laundering crimes, and a trial of those persons and entities is now pending. Is that correct?

Mr. BARR. I believe that is correct, although I can't remember if it was the 5th of September—yes, it was. That is correct.

Senator SIMPSON. Yet we were left with the impression in some of the pages of our newspapers that somehow one should come away with the impression of the Justice Department's investigation of BCCI that the first Tampa investigation only resulted in indictments, and, two, that high-level officials at BCCI were not indicted.

Could you again respond to those two points just so the record is clear and complete?

Mr. BARR. A lot of the press commentary on BCCI has failed to distinguish among the different kinds of criminal offenses that are alleged and when those allegations surfaced. Prior to January 22, 1991, the allegations that were properly within the jurisdiction of the Department of Justice and being followed were money-laundering allegations, and they were followed. They centered on Florida, and the Department of Justice prosecuted a case developed by the Treasury agencies and achieved very substantial success—one of the greatest successes we have had in the money-laundering area.

Senator SIMPSON. It seems to me that in listening to the questions and your responses, it would seem to me that some of the critics of the Department are overlooking the extremely complicated and difficult nature of this type of investigation. Obviously this money-laundering charge and this case involved complex, highly complex financial transactions occurring around the world. And that is correct, is it not?

Mr. BARR. That is correct. The bank operated, I think, in 72 countries, or in that range. The operations seem to have been structured in a way that avoids regulatory review. One of the interesting statements made in the Washington Post editorial a couple of days ago was that all this was going on right under the regulator's nose, and I can't think of a less apt description of what was happening.

Price Waterhouse was the internal auditor for this bank and had access to witnesses and people and documents within the institution, and it wasn't until November 1990 that the internal auditors, who had all those advantages, were able to piece together what was going on. And even then, it is only part of the picture.

Senator SIMPSON. And so actually we have this huge network of an institution, a foreign institution, if you will, with only a very small presence in the United States. Isn't that correct?

Mr. BARR. That is correct. It was a very small presence. The vast bulk of injury done was overseas to foreign depositors.

Senator SIMPSON. And is it also correct that much of the records, many of the records, most of the records and other material that would be evidence is located overseas? Isn't that correct?

Mr. BARR. That is correct. The key personnel and the key documents are overseas.

Senator SIMPSON. And it takes obviously a huge investment in time and energy to put together a prosecution of a case like this, does it not?

Mr. BARR. Absolutely. A lot of preparation goes into preparing a case. Look at the money-laundering case itself. It was a 7-month trial.

Senator SIMPSON. And I think you said eloquently yesterday, and you said it crisply, too, that the Justice Department should not indict someone based on mere rumor, speculation, hearsay, or political pressure or uncorroborated testimony of a single witness. That was and is your feeling, is it not?

Mr. BARR. I think the basic safeguard we have in our entire system is requiring evidence before we hold someone to account under our criminal laws. We have to act on the basis of evidence.

Senator SIMPSON. Well, there wouldn't be a member of this Judiciary Committee who has practiced that wouldn't believe that. That is one thing we can agree on from either side of the aisle. But it seems to me that—

Mr. BARR. And I will expand on that and say it is more than just evidence. It has to be evidence that is admissible in court. We have to be able to prove whatever counts we are going to indict someone on.

Senator SIMPSON. It would seem to me that if the Justice Department were to indict the average violent criminal defendant based on mere rumor, speculation, or hearsay, or political pressure, I think there would be intense criticism of the Department for overstepping the proper bounds of prosecutorial discretion. So it seems to me there is almost a double standard working here. If a criminal defendant deserves protection against unsubstantiated indictments, then so does BCCI or any other large corporation. I think the Justice Department would and should indict BCCI once it would obtain sufficient evidence available in a court of law to justify indictment. And if it takes some time to obtain the proper evidence, then so be it.

I think that that is what our Constitution requires. Do you concur?

Mr. BARR. Yes.

Senator SIMPSON. I think it is just good to touch upon that as we get swept away in the sinister network of BCCI, which it certainly obviously has proven to be.

Let me ask you a couple of other questions. I know you have been asked questions about the civil litigation, the Federal civil justice reform issue. I have been either the chairman or the ranking member of the Immigration Subcommittee since 1981, and I have been closely involved in monitoring the activities of some of the Justice Department's largest agencies, or at least one of them, and that is the Immigration and Naturalization Service. I know Senator DeConcini asked you about that. I have been involved with them for 10 years.

Historically there has been a tendency, I think, to treat the Immigration Service as the long lost relative or something lesser of the Justice Department. Indeed, that agency has a very tough mission, one of the most difficult missions of any agency. So I might ask you, what do you think are the most important challenges now facing the INS, and how would you intend to ensure that the Immigration Service is a vital part of the Justice Department's priority activities and that their voice is heard within the Department?

Mr. BARR. INS' voice is heard within the Department. I, since becoming Deputy Attorney General, have had two of my Associate Deputies working a substantial portion of their time—one 100 percent and one probably 33 percent of her time—on INS issues.

I think basically INS, as you point out, has a difficult mission, and because of budgetary constraints, there has been a period of underinvestment in the agency. And based on the information I have, I think on the management side there is a need to—and I think this is both what GAO and Norm Carlson concluded—a need to put in place financial systems and a better budgetary process and accountability, computer systems and record systems, better integrated throughout the INS—the whole management side. And I

got six more SES positions for INS, and those people are in the process of being recruited for INS for these senior management positions. So upgrading the management side of INS is a key area.

Beyond that, I think, as Senator DeConcini said, we have to bolster the Border Patrol, both in terms of manpower but also equipment. Much of their equipment has to be replaced. I think we have to deal better with the backlog of asylum petitions. We created a corps, a special trained asylum officers corps, to deal with it. This year we didn't get as much in the budget as we wanted to get in order to bring those people on, but we still have made a lot of progress in the asylum area. Inspectors, as you know, there have been a lot of complaints about inspections at airports. We have upgraded that, added inspectors.

So I think both on the management side and on the operational side, there is a lot that has to be done. But I think we are moving in the right direction, and I have made INS a higher budget priority in this budget cycle than it has ever been before.

Senator SIMPSON. So it is something that stimulates your personal interest to nurture and sustain and supervise this part of your operation in a new way?

Mr. BARR. Yes.

Senator SIMPSON. I think that is important. Then, of course, we passed a Legal Immigration Act of 1990. That took effect October 1, 1991, and unfortunately many of the regulations under that act that the INS is responsible for under that law have not been issued in final form. There are only three members of the Subcommittee on Immigration and Refugee Policy; that is Senator Kennedy as chairman and Senator Simon and myself. It is the smallest subcommittee because no one wants to get on it. We know how that works.

So we do our labors, but I would just say in conclusion you certainly are not personally responsible for that delay in formulating those regulations. But it may be OMB that is causing the delay, but all I ask you is to make some inquiries into the tardiness of the 1990 act regulations to see if you can break that bottleneck. And if you could give me your views on that at some later time, I would greatly appreciate it. I think we need to do that.

Mr. BARR. Certainly, Senator. We would be glad to do that.

Senator SIMPSON. Thank you very much, Mr. Chairman.

The CHAIRMAN. Thank you. Each of you have had a second round—I mean a first round?

Senator SIMON. We have each had a first round. I need a second round.

The CHAIRMAN. And so do I. So good luck. It is my turn. [Laughter.]

No, you go ahead. I can wait. I will just wait until the end. I have at least an hour's worth of questions. You go ahead.

Senator SIMON. I will be very brief in my questions.

The CHAIRMAN. That is OK. Take your time.

Senator SIMON. One is to follow through. First of all, I agree with what Senator Simpson has just said on the regulations on immigration. One area that you have had something to do with where I don't know what the right answers are, other than that I feel we don't have the right answers, is the Cuban detainees. We have, for example, some young immigrants who committed crimes and are

now serving long beyond the point of the crime they were convicted for. There are a lot of other different circumstances.

I don't know what the right answer is. I am not being critical of the Justice Department because I haven't offered anything that is more constructive than what you are doing. I do have the feeling that our answers now are not the right answers or are not adequate. Any reflections on your part on this?

Mr. BARR. As I understand what we are trying to do is to take a look at the hardened criminal element among the Marielitos that came to the United States and we have tried to separate those that we felt were incorrigible and posed a risk to our citizenry if they were permitted to get out on the streets. And that group numbers in the hundreds and we are trying to deport them to Cuba as quickly as we can.

And there was an appeals process set up in the wake of the Atlanta prison riots which was put in the Deputy Attorney General's office to run. It was the Mariel Cubans review process, and when I got down to the Deputy's office, I asked that we expand the panels that were doing that and move along much more quickly on it, because these people were being detained and I thought that we had to go through the process and do it in an efficient way.

And we are now nearing the end of that process for those that the Cubans have agreed to take back, and there are now several hundred more who are not on the list, they are not listed Cubans, and we are trying to persuade the Cubans to substitute—there are some people who are listed who are now being permitted to stay and now we are trying to get the Cubans to accept these nonlisted Cubans in lieu of some of the listed ones who we have decided can stay in the United States.

It is a difficult problem. It is a costly problem, and we are trying to work through it as quickly and efficiently as we can, but I do agree with the general policy that hardened criminals, people who have had problems with the law before they left Cuba and have had problems with the law sometimes here when they have been given a chance and let out, that these are people that we should deport back to Cuba.

Senator SIMON. There is no disagreement on that. I have just got a few wrap-up questions. Hate crimes. The FBI has been keeping track of statistics since the first of the year, when are we likely to get the first report on hate crimes statistics?

Mr. BARR. I think the first report will be December of this year. It will be a partial report. The FBI, as you say, does have responsibility for collecting this data and they will be collecting it as part, as you know, of the uniform crime reporting system. That is a system that requires State cooperation. The Bureau has carried out training programs now involving all 50 States. Reports are being complied. There are still some States that are doing a better job than others and still glitches that have to be worked out.

The first report though is scheduled for December, and I think it will be prepared. And then the whole system is scheduled to be implemented at the end of 1992.

Senator SIMON. If I may follow through on Senator Grassley's question on the local or other bar associations, an example that we had a bit of a problem with the Department of Justice on. There

are nominees for the Court of International Trade. Well, the bar association—and I do not differ with your prenomination process of using the regular bar association—but the Court of International Trade Bar Association says we would like to interview these nominees. I am not suggesting that you require that they be interviewed but it does seem to me not unreasonable that the bar association should have the ability to request an interview and that the Justice Department should permit them to be interviewed.

The same if a nominee in the Northern District of Illinois, while the American Bar Association is a fine organization, the Chicago Bar Association or the Chicago Council of Lawyers, each of whom have several thousand members, they are the people who are going to be dealing directly, and at least to permit an interview does not seem to be an unreasonable policy for the Department of Justice.

I just pass that along.

Mr. BARR. OK.

Senator SIMON. And the silence, I assume means that you agree with my process.

Mr. BARR. I, as I think you have gathered, understand the distinction between involving them in the prenomination process, versus obstructing access and interfering with candidates talking to them, and that is what I am willing to explore with these groups.

Senator SIMON. No, I understand and there is no criticism on the prenomination process at all, and it just does seem to me that permitting them, if they want to, to meet with the other groups.

And then one final very important question. You are going to be the chief law enforcement official for the Nation; you are the acting chief right now. What about an acting chief who permits three girls to skip school? What do you think of that?

And may I ask the three daughters who are over here, and this is very important now, do you think we should approve your father for Attorney General of the United States?

[The three Barr daughters responded affirmatively.]

[Laughter.]

Senator SIMON. I hope you got that in the record, all three said, yes.

Mr. BARR. It better be.

Senator SIMON. It was a 2-to-1 vote, no, it was all three and that is powerful testimony. We thank you, very, very much, and we wish you the best.

Mr. BARR. Thank you, Senator.

Senator LEAHY [presiding]. Senator Thurmond.

Senator THURMOND. Thank you, Mr. Chairman.

Mr. Attorney General, the Senate has passed a crime bill this year, the President recommended a strong crime bill, and the House has passed a bill. We will probably go to conference soon. I want to ask you about the importance you place on a tough crime bill that provides death penalty provisions, habeas corpus provisions, exclusionary rule provisions?

Mr. BARR. It is an important part of the President's program, Senator, and it is, I think, a very important part of our efforts to combat crime in this country. There are a lot of good provisions in the crime bill. I think we need a Federal death penalty. I think we do have to reform the habeas corpus process. We have lost the idea

of finality, in my view, through the abuse of the writ of habeas corpus, we have lost the whole concept of finality in criminal adjudication in this country. We never come to rest.

Obviously we wanted a reform of the exclusionary rule; we did not get that in the Senate. From my standpoint, the strict penalties on firearms offenses that are in the bill are very important, especially at this time as we face the violence in the cities. And there are a number of other excellent proposals in the crime bill.

So we would like to see Congress move quickly to conference and would like to see a crime bill come out of conference that meets the President's objectives.

Senator THURMOND. One thing that has clogged the Federal courts, has been the appeals in the habeas corpus proceedings. This needs reform exceedingly bad. In my State, for instance, a man came there and asked for coin collectors, found one, killed him, killed three other people in the process, injured a woman for life. The chairman remembers she came up here and testified.

And he was convicted and sentenced to death. It was 10 years before that man finally went to the electric chair. Senator Hatch had a case in his State where one went 16 years. People lose respect for the law when something such as that takes place.

That is extremely important, I think, to get this habeas corpus straightened out. Do you feel that way about it?

Mr. BARR. Yes, I feel very strongly that way about it. Not only in death penalty cases, although those are usually the most celebrated examples, but even in other cases. And I know that most people who raise habeas corpus claims for noncapital cases are nevertheless in prison, but I think a dimension that people do not pay much attention to and should pay more attention to is the impact of endless habeas corpus petitions on the victims of crime.

We are not talking about an appeals process. Habeas corpus is a writ that is used after the appeals process is completed. And under our current system there seems to be no end to it. Criminals can continue after their appeals are done to bring an endless series of repetitious and duplicative petitions, reopening their cases, going back into the courtroom, and that lack of finally has a lot of wear and tear on people who have been victimized by crime. They never are able to look and say, justice has been done and concluded. Each year their wounds are reopened as they see the perpetrator, again, attempting to escape just punishment.

Senator THURMOND. In the case I referred to, I believe appeals went to the Supreme Court of the United States four different times in one case. Finally, the time has come when we have to have finality, would you agree?

Mr. BARR. Absolutely.

Senator THURMOND. I want to ask about another matter. In the Supreme Court decision, the *United States v. Batson*, which relaxed the racial bias in jury selection, the House would apply *Batson* retroactively in its crime bill. What effect would the retroactive application of *Batson* have if the House version is enacted into law, especially for those individuals convicted years ago?

Mr. BARR. My understanding is that was defeated in the House and, therefore, it is not in the Senate bill, and it is not in the House bill, and hopefully it will not be in any bill coming out of

the conference committee. But the practical impact, because of records not being kept and the expense is that it would have upset virtually all prior convictions or many prior convictions because the prosecutors would not have been able to meet the burden. But I am hopeful we will not have to deal with that issue, since it did not garner majority support in the House.

Senator THURMOND. Wouldn't it be ridiculous where they have been convicted years ago to go back now and review those matters?

Mr. BARR. I think it would place an impossible burden on the Government.

Senator THURMOND. I want to ask you about another topic. In the next 2 years, we are going to close a lot of military bases. Have you given any consideration as to whether some of these bases could be used for Federal prisons and save the taxpayer's a lot of money?

Mr. BARR. Yes, and—

Senator THURMOND. Some of them could be used maybe for drug addicts, for treatment of drug people?

Mr. BARR. Mike Quinlan, of the Bureau of Prisons, has, I think, been very aggressive in looking for any opportunity to use military bases, either for a prison facility or a camp, boot camp, whatever use it can be put to.

Senator THURMOND. That is all the questions I have right now. Thank you, very much.

Mr. BARR. Thank you, Senator.

Senator THURMOND. Mr. Chairman, thank you.

The CHAIRMAN. Thank you.

I have two sets—did you want to question?

Senator LEAHY. I had some more questions, but, Mr. Chairman, it is your turn.

The CHAIRMAN. I will pursue one area that I hope I can finish with and that is some additional questions with regard to BCCI, if I may.

Mr. Barr, as I indicated in my opening statement, or opening set of questions to you, yesterday, that I asked you about the NBC News report on the Department's investigation of BCCI. And I want to make it clear that I am not suggesting that the Department should be bringing indictments without the necessary evidence to support them. But the allegation has been made that the Justice Department has not put the full weight of its resources, including the personal attention of the Attorney General, behind this investigation into the largest bank fraud in history.

And the NBC report, in addition, suggested that high-level Department officials, naming Thornburgh and you, personally, have purposefully acted to delay or impede action.

NBC reported that key BCCI indictments developed by the IRS in Miami have been stalled by the Justice Department since August 23, almost 3 months ago, approximately the time that you assumed the role of Acting Attorney General.

Do you know, Mr. Barr, whether the Justice Department has been sitting on these or any other indictments?

Mr. BARR. Yes, I do know the answer to that. And if I could use this question maybe to lay out what I think has been the course of

activity and where these indictments or potential indictments and others fit into the picture.

The CHAIRMAN. Sure.

Mr. BARR. May I have that opportunity?

The CHAIRMAN. Yes.

Mr. BARR. And I think the best way to start is to understand how the Department is normally structured, and then see how this case went up against that structure and what changes were then made to respond.

The Department of Justice tries to walk a delicate line between decentralization and centralization. There are a lot of advantages to decentralization. By that, I mean we have 93 U.S. attorneys out in the field with their own staffs and offices. And normally the U.S. attorney who is the chief law enforcement officer in a district, has a lot of independence, and works directly with the investigative agency, so that Customs or IRS, or DEA brings the case to the U.S. attorney. The U.S. attorney just handles the case. That is a decentralized operation. You get much—usually you get expedited handling of cases; they are closer to the action; there is not a lot of bureaucracy and you can make a lot of progress.

Now, that is the normal system in the Department. Then the U.S. attorney's manual and other guidelines in the Department require U.S. attorneys, on specific matters, to come back to headquarters for various kinds of approval. Some examples of that would be, there is a standard requirement if a U.S. attorney is going to bring a RICO count he has to go back and let the Criminal Division look at it in Washington. Certain kinds of tax cases have to be reviewed by the Tax Division before a U.S. attorney brings it, so you have a national policy.

If another district gets a case that is related, so you have two districts working on a similar or related matter, then those U.S. attorneys are supposed to coordinate with each other.

And if there are disagreements between them or decisions that have to be made that they cannot agree to then they bring it to Washington for arbitration. That is the decentralized system we operate under and I think generally it serves us well.

I think the key date to look at from our standpoint is January 22, 1991. And then ultimately the period from May through June 1991. Prior to January, we basically had an investigation going on in Miami, and investigative activity in Tampa that were BCCI-related. They were not jostling up against each other. Whatever may be said of how those investigations were being handled within each district, there was not much need for coordination between Miami and Tampa.

The old decentralized model prevailed during that time. The U.S. attorneys were in charge. On January 22, we received the first criminal referral from the Fed. That related to one financial institution.

The CHAIRMAN. And how did that come from the Fed? From the Fed to whom?

Mr. BARR. I believe it was from the Fed to, probably the U.S. attorney's office in the District of Columbia. Yes, that is correct.

Now, see, normally agencies take the referral to the U.S. attorney, not to main Justice. So that started up the D.C. activity on

that particular referral which related to the alleged secret acquisition of one financial institution.

So from January forward then we had three offices operating—D.C. on a regulatory violation, alleged regulatory violation; and Miami and Tampa going along.

The CHAIRMAN. This was in what month now, roughly?

Mr. BARR. This is the period from January to May. So we had three different districts. There was no apparent reason for any change in the system, any more active coordinating role or centralization by main Justice. We did not see any coordination problems at that time.

May is where things started to change. In May into early July, the first week of July, we quickly had—

The CHAIRMAN. This was in 1991?

Mr. BARR. Yes, 1991; this is just several months ago, we got two more institutional referrals relating to separate financial institutions. So we then found ourselves with five districts going. Also at that time there was a minor turf fight between two of the districts, the U.S. attorneys, and they were not shoving the case away, two U.S. attorneys were fighting to take the case.

So it was at that point at the very beginning of July when we had five districts going, and there were some immediate coordination problems as these new offices came out of the chute and wanted to start interviewing the same people. And during this period it became evident to Bob Mueller, the head of the Criminal Division—started to become evident that we were going to have coordination problems.

The CHAIRMAN. Let me ask you, this is about coordination now. I want to make sure I get it. Where did Sapphos fit into this picture? He was from the Justice Department's Narcotics and Dangerous Drugs Division, right?

Mr. BARR. That is right.

The CHAIRMAN. And as early as back in February 1990, he picked up the phone, allegedly, and called folks in Florida.

Mr. BARR. Right. As I said, you will have—the U.S. attorney's office will be running a case, and there are times when they go back to headquarters to get approvals, to have reviews done, or to get the support of expertise back at headquarters. But the person running the case is the U.S. attorney. Sapphos' involvement, as I understand it—and there are people here to correct me if I am wrong—he got involved because we wanted to maintain some undercover—we wanted to let some accounts continue as sort of an undercover operation in BCCI as part of a money-laundering investigation. And I think he got involved to see if we could keep those accounts going, even though they technically were in violation of law, as part of that undercover operation. But that doesn't mean that the drug section in the Criminal Division was running the case in Florida.

The CHAIRMAN. Did the U.S. attorneys know that Sapphos had called and requested the Florida regulators not to shut them down?

Mr. BARR. That is not what he requested and—

The CHAIRMAN. What had he requested?

Mr. BARR. He wrote two letters. The first letter was inartfully written, and what he was trying to do is say, look, we went to—I

think we went to BCCI and said, as part of the cooperation, we want you to keep these accounts going. OK? It was sort of a sting-type operation. They said these accounts are in violation of law, we will get killed by the Florida regulators and get shut down by the regulators if we allow these accounts to go.

Sapphos was saying to the regulators, We want to tell you that these accounts are OK, they are part of our undercover operation, so you should allow them to—the tacit message in the letter and what was left out of the letter was, to the extent they are going to be permitted to operate, we want them to operate with these accounts going.

When the regulator called up and said, “Are you saying that you want us to keep them open, or are you saying if we keep them open let them have these accounts?” Sapphos immediately followed up with a second letter saying: I am saying the latter, I am not taking a position on whether they should continue to operate. I am saying if they are operating we would like them to have these accounts in there.

So that was that episode. But to get back to sort of the overview, it was in July, around the first—

The CHAIRMAN. Now, something like this, though, Sapphos’ action, would that have to have been signed off by the head of his Department, the Narcotics and Dangerous Drugs? Did he have to sign off with anybody else, or is that an independent action he could take? Again, the mechanics of how it works.

Mr. BARR. My understanding is that a district doesn’t have to go to headquarters to have this done.

The CHAIRMAN. I am not sure I am asking the right question then. Where is Sapphos?

Mr. BARR. Sapphos does not have to go up to Bob Mueller or anybody higher to do that.

The CHAIRMAN. Where is Sapphos residing?

Mr. BARR. Washington, DC was where he resided. He was head of the drug section of the Criminal Division in main Justice.

The CHAIRMAN. Main Justice. So he is at main Justice.

Mr. BARR. Yes.

The CHAIRMAN. OK. Go ahead.

Mr. BARR. In the first week of July, in that timeframe—I am not going to say during the first week, but basically between late May and early July, it became evident with the new referrals now dealing with three financial institutions, similar claims, similar players, that we were going to have coordination problems and this thing was getting bigger. Also the international dimension rapidly became evident on July 5 with the worldwide shutdown, and the need to get the Criminal Division’s Office of International Affairs involved in helping us get what we needed overseas.

Mueller recommended to Attorney General Thornburgh in July that we had to do more consolidation and more coordination, and we had to start pulling some of this more into Washington. And that is when Attorney General Thornburgh said to Mueller, Go ahead, spare no effort, follow the—

The CHAIRMAN. Now, in this timeframe, were you aware of all this? Would you have been called in on this? Would you be part of this? Technically everything goes through you to the Attorney Gen-

eral, but, in fact, is that how it works? What did you know about all of this at the time?

Mr. BARR. This was basically on my far periphery in the sense that Mueller was basically handling this and dealing directly with Thornburgh on it. In the July timeframe, I started taking over the budget hearings because we expected, depending on Governor Thornburgh's future, that he might be leaving the Department, and he told me, "You handle the budget hearings," which takes up most of July. I started getting into some other things, and basically there was a division of labor. If Bob Mueller was working on BCCI and running that operation and reporting to Thornburgh on it, I had other things to do. I had my hands full on a number of other crises.

So then Thornburgh gave Bob the marching orders to consolidate at that point, much more consolidation and coordination. Between that time and August 15, when I became Acting Attorney General, my role in the matter was to say to Bob Mueller a few times, "If you need any support from me, any additional resources, if a U.S. attorney gives you a hard time, if someone is blocking this, you know, and being obstreperous, come to me and I will give you full backing on this thing, make it clear that you have full backing on it."

Then on August 15, or a week or so before that, at the time it was clear that Thornburgh was leaving the Department, I told Bob that I had better start getting some briefing books and get up to speed on BCCI, because with the Attorney General leaving obviously I was going to have to get on top of it.

The CHAIRMAN. Did you have any sense prior to June that this was a big, big deal? I mean personally. Did you—

Mr. BARR. No.

The CHAIRMAN. This thing is—did you have a sense it was as significant as it may be, that it has touched so many people, places, and things?

Mr. BARR. No, I did not until in July.

The CHAIRMAN. Well, my time is up. Let me just conclude with one very quick question, and I will come back to this. Then I want to get on to separation of powers, which I want to talk a lot about.

Mr. BARR. Could I say something?

The CHAIRMAN. Oh, yes, anything you want to say.

Mr. BARR. Because you asked about the IRS once, and I want to get to that because it shows you the delicate line we have to walk.

Basically, as I said, between May and through June is when we had to ratchet up the effort because of these new referrals coming in. We understood the thing was getting significantly bigger. We then started greater coordination and consolidation. After I got into it more formally and got up to speed on it, I suggested to Bob in the August and September timeframe that we even have to do more, more consolidation. I did intervene on occasion with U.S. attorneys to take parts of cases and shift them around to where it made more sense to investigate them.

Now, when you consolidate and you coordinate, you start running into some other problems that you didn't have before, and that is that some of the hard chargers out in the field now have to go back to Washington before doing a certain thing. We had situa-

tions where we had, I am told, 15 different agents and prosecutors wanting to talk to the same witness. So then you have to start setting some priorities and queuing things up, and that adds a little bit more time, on occasion. Overall the case as a whole moves forward better, but little parts of it here and there, it may appear to the person on the ground, "well, wait a minute, why do I have to go and get approval to do this?"

So I think we are starting to pick up a little background noise because we have consolidated. It shows you sort of the catch-22 you are in when you are trying to walk a fine line between decentralization and consolidation. Earlier we caught flak because it was alleged we weren't coordinating enough. Now we are coordinated, and now we are picking up a little flak that, well, now you have to go through some bureaucracy.

On the IRS issue, there are potential tax indictments in the Southern District of Florida. Under uniform rules in the U.S. attorneys manual, these cases have to be referred to the Tax Division for approval. This is not a special case. As a matter of course, the Tax Division reviewed these cases. There was a dispute between the Tax Division and the Southern District as to whether the cases should go forward in the form in which they were presented.

The person who was acting for me essentially as Acting Deputy reviewed the matter, made a decision, and I am told that both the Tax Division and the Southern District, the U.S. attorney in the Southern District, are happy with the decision.

The CHAIRMAN. So you are suggesting that that may be the genesis of the assertion made by somebody and reported by NBC that something is being sat upon?

Mr. BARR. Yes. I think there was a legitimate professional difference, and I think it has been resolved.

The CHAIRMAN. Well, I will yield with this last question, and I am going to divert for a minute. I am trying to get enough loose ends here before I open up other things.

I asked you yesterday about your old law firm, its representation of Mr. Naqvi—I think I am pronouncing it correctly—present representation, and I am told—I am under the impression that Mr. Webster, a former partner of yours, is the one representing Mr. Naqvi.

My question is this: Has Mr. Webster of your old law firm, or anyone else from your old law firm, at any time contacted you about their representation of Mr. Naqvi?

Mr. BARR. No.

The CHAIRMAN. Have they contacted you at all about their representation of any ancillary issue related to BCCI, direct or indirect?

Mr. BARR. No. Let me just—you are not saying confirming that there was a representation? You are talking about contacting me to discuss a case or—

The CHAIRMAN. Correct.

Mr. BARR. No.

The CHAIRMAN. Did they contact you to confirm that they were representing?

Mr. BARR. Well, you know, last night I asked whether or not there was any representation of BCCI, and I asked about the representation of Naqvi.

The CHAIRMAN. Right.

Mr. BARR. I was told that there was no representation of BCCI at any point.

The CHAIRMAN. But there is representation of Naqvi? Or can you tell us that, if you know, based on your conversations?

Mr. BARR. At least there was representation of Naqvi. I don't know what the present status is.

The CHAIRMAN. I got you. But no one initiated a telephone call to you at any time from the time you got back to the Justice Department from your old law firm about Naqvi or anything else having to do with BCCI?

Mr. BARR. No one has contacted me in any way from the law firm relating to the BCCI case, discussing the case with me or asking me to do anything about it.

The CHAIRMAN. Thank you.

Senator Kennedy.

Senator KENNEDY. Thank you, Mr. Chairman.

I know a number of my colleagues raised the INS issues, and I don't want to duplicate those. You have made some progress with INS in bringing a greater accountability and policy coordination, for which you are to be commended. Clearly more has to be done. We have the two major pieces of legislation with regard to illegal immigration and with regard to the legal immigration, which Senator Simpson and I and Senator Simon have been very much involved in. We look forward to working with you.

I had just a couple of related questions dealing with those. This is with regards to HIV and immigration. The new immigration, last year we gave HHS the authority to decide which diseases should be on or off the list of diseases which exclude people from entry, and we made clear that this was purely a public health determination based on the threat to the public. In January, Secretary Sullivan proposed taking HIV off the list, and he was fully backed by public health experts, including the President's adviser on science and technology. But in May he issued interim rules keeping HIV on the list, while interdepartmental discussions continue.

I am sure you are aware of the press accounts that reported that you had a major hand in overriding HHS, primarily because you were concerned about the cost and the impact on the public health system. Can you tell us what role you played in that issue?

Mr. BARR. Sure. As I recall, the proposed regulations in January embodied an income or financial assets type of test. It said that people could come into the United States as permanent immigrants if they could show the financial wherewithal to cover long-term health care if they had HIV. And INS objected to these regs, felt that it would put a tremendous administrative burden on INS to determine who passed this wealth test and who didn't and whether or not a particular individual is likely to incur substantial costs and so forth.

So through the Department came INS' concerns about it and requests that we support them in slowing this down so that we could consult with HHS about it. In addition, others in the Department had concerns about squaring the conclusion that HIV was not, in the words of the statute "a communicable disease of public health

significance." And the legal rationale that was being used by HHS on this—and at the time we didn't have any opinion from the HHS general counsel supporting this position, at least not in writing that we were aware of—was that they were interpreting the term "communicable disease of public health significance" as saying that no matter how communicable it was, the significance of the disease can be discounted if there is a substantial foothold of the disease in the United States; that is, you only look at the incremental significance of the disease. And we were not sure that was a proper construction of the statute, so we wanted a chance to discuss this with HHS.

At some point, some people, some subordinates in the Department were communicating with HHS trying to get them to delay this and trying to persuade them that this was not the way to go. And they asked me to weigh in as well. And so I called OMB and said I wanted a review of the regulations, and I wanted a chance to weigh in on them.

Since then we have been talking to HHS, and I think we have generally come to a—or a consensus seems to be taking shape.

I would add that the AMA—after I did this, the AMA issued a letter which essentially supports the position that I took, which was expressing concern about having long-term HIV immigrants who would then sap the health care services in the United States, which in my understanding are already not necessarily providing adequate health care to people that have HIV here.

I thought that was not adequately treated, and I believe that the latest position of the AMA, at least the latest I have seen, supports that.

Senator KENNEDY. Well, of course, you have provisions under the INS to deal with what is considered public charge for people that have various medical problems, so that they are not going to be an undue burden, and I think that is certainly understandable, and certainly there was no attempt to alter or change on that particular issue or question.

The real issue on this was who is going to determine the basic question of meeting the legislation, which is very specific. It said, on health related grounds, in general, any alien who is determined, in accordance with regulations prescribed by the Secretary of Health and Human Services, to have a communicable disease of public health significance, and then it would appear that Secretary Sullivan made a judgment, after examining the various recommendations of the President's panel, President Bush's panel and CDC, and made the recommendations, and then it was effectively backed off by the INS.

Mr. BARR. Actually, Senator, my concern on the public charge was exactly as you say. The HHS was proposing to have the Justice Department use the public charge exception, which says that we start making judgments about people with diseases and whether they are going to be able to support themselves. My position was, it was going to be hard to sustain. If we start doing that for HIV—first, it is hard to do, just on the basis of HIV, it is hard for INS people to make those kinds of judgments.

Second, what justification would we have at that point for just doing it to HIV. If we start using the public charge against people

with serious medical conditions, then we are going to have to start doing it for renal disease, for heart disease——

Senator KENNEDY. For cancer.

Mr. BARR [continuing]. For cancer, and since most of these people who apply are applying from within the United States—as you know, most of the people who are applying for permanent status are already here—we would be in the position of applying this kind of financial test to people who are here in the United States and then excluding them, and when people got wind of this—I had people come to my office, for example, the Catholic Bishops sent a delegation over from their group here who were concerned about refugee and immigration issues, saying don't go down this route of public charge.

So, I thought that the HHS regulations that were trying to shift this issue over to public charge were a mistaken way to go. I thought it raised a lot of policy issues, and I just wanted a chance to have the Department, which had a legitimate interest in this area, to have them fully aired.

Senator KENNEDY. Well, as I understand, the AMA concurs with the Public Health Service determination to remove HIV and other diseases from the list, leaving only infectious tuberculosis—I am just reading from Dr. James Todd, President—"we do not believe there is a sound public health justification for continuing to exclude aliens who are infected with these diseases, none of which are spread through casual contact."

Mr. BARR. Actually, the last letter I saw, my recollection—and, again, my recall may not be perfect here, but AMA wrote three letters initially, with ever more refined positions, and then more recently, since the letter you read from, I believe—I don't know what the date of that letter is, Senator—they wrote a letter saying that, in the long term, there should be no permanent admission, because of the impact on the public health system, but that there should be admission for travel, and that Congress should address this issue. That is the last letter I have seen from AMA, I believe. Maybe I am mistaken on this point.

Senator KENNEDY. Well, as I understand, the AMA has been concerned about cost for immigrants only, not concerned about communicability. That is my understanding. Maybe you have another reading on that.

Of course, the consular offices at the present time in INS have the authority now to reject persons with disease disabilities at the present time.

Mr. BARR. It is almost never used.

Senator KENNEDY. Well, they can do it, if there is going to be a public——

Mr. BARR. I think that would be a very significant policy change, to start not only excluding people——

Senator KENNEDY. Do I understand, then, what you are really talking about is not cost, you are talking then about the disease. Because if you are talking just about cost and we are having people come in here with cancer and the other, renal dialysis and other kinds of health challenges, you are not prepared to exclude them, but you are prepared to take a general class in terms of HIV, as I understand it, so it really isn't the cost?

Mr. BARR. Remember, the HHS regs that I raised concerns about would have excluded permanent aliens or permanent immigrants who did not meet a financial test, and do it under the theory of the public charge provision, and my point was—that was their proposal and they wanted INS to administer it, and my concern was how do you do that and then not do it in other areas. That was one of my concerns.

Senator KENNEDY. Well, they are not prepared to do it with the other diseases, though. You are making the case very well that they are doing one thing with regard to HIV and something else with regard to other diseases.

Mr. BARR. Senator, all I am saying is, you know, this was a complex policy—

Senator KENNEDY. Well, do you have a position just with regard to the health questions?

Mr. BARR. I am not responsible for health. That is not my area.

Senator KENNEDY. But if the Secretary of HHS indicates that they don't believe that the HIV falls within the statute of having a communicable disease or public health significance that is defined in the report of disease of public significance means ones in which admission of aliens with such disease would constitute a public health threat to the United States, such determination shall be based on current epidemiological principles and medical standards. So, if it meets those requirements, you are prepared to—

Mr. BARR. If an expert agency makes a rule that is not "arbitrary, capricious, * * * or not * * * in accordance with law," I think that is the legal standard and then my role ends.

Senator KENNEDY. Well, after you are confirmed, can we talk about it?

Mr. BARR. Sure.

Senator KENNEDY. Good. Let me go into just a couple of other areas quickly, if I might. One is on the asylum provisions, which you are familiar with, the area where I certainly support what the former Attorney General did on asylum. You know the backlog that we have had, over 100,000 cases, limited resources, leaving people in limbo, and I would hope—you talked about limited resources earlier, but that is a place where we have to really give some attention and I just want to flag that for you now, and anything we can do in terms of priorities, because we did get good regulations established under that, a lot of people hanging out there, case by case, and it is very, very slow moving. They have made some recommendations of what is necessary to try and clear that up, and I hope you would get a look at that.

Mr. BARR. Yes, Senator.

Senator KENNEDY. Can I ask you, did you meet with Mr. Martinez at all, as you have been Acting Attorney General and Deputy Attorney General, in terms of the war on drugs?

Mr. BARR. Yes, several times.

Senator KENNEDY. Can you tell us basically, just generally, what the issues were that you were talking with him about?

Mr. BARR. Well, the drug strategy and what shape the drug strategy should take, but, more particularly, usually issues of coordination, how we can improve coordination within the Federal Government.

Senator KENNEDY. I just have a couple of other areas. One of the things that we explored with Mr. Martinez is on the mandatory minimums. We talked about it in our office. I really hope you get a chance to look at both the Sentencing Commission's recommendation in this area and some of the administrative conference's.

I am not going to take a lot of time here, but with the enactment, particularly on—they enacted in Florida, when he was Governor there, the various mandatory minimums, primarily in the areas of drug-related crimes, and what happened was the prerelease of rapists and criminals that were in the violent end of the criminal sector were squeezed out, all shorter in time, with the resulting reaction, at least of statistics reflective of continuing escalation of the crime curve on us.

I would like at some time, not today, go through this with you, but I would really invite your attention in just taking a look through that of what happened down there on this. We are going to have the study from the Sentencing Commission, and I would welcome both your own review of that particular evolution there in Florida, and I hope that we are able to work.

Could I have just one final question: If confirmed, can you give us assurance that the Justice Department will do nothing to delay the civil actions now pending against Mr. Keating presently set for trial, I guess, in March 1992?

Mr. BARR. Unless the civil actions somehow impair criminal investigation or some other potentially more significant civil action. We are coordinating a number of different things, and there certainly would be no delay for delay's sake, but if the sequence of civil action impaired a criminal case, we might seek some kind of delay.

Senator KENNEDY. The point that I am getting at is, obviously, the delay of any possibility of recovery with the extent of criminal action, just to try and give some protection to thousands of people who have been adversely impacted, and whether that, obviously, would be adverse in terms of their ability to pursue their interests, and this obviously affects the consumers on this. Obviously, whatever is necessary in terms of the criminal justice system ought to go forward, but the spinoff on that would obviously delay in a very important way, I guess, the ability of a lot of the consumers to recover, and they have great concern.

As I understand from what you are saying, you are sensitive to that and would try and at least, to the extent that—

Mr. BARR. I would not want to be in the position of preventing or being responsible for the loss of a potential recovery that could make victims whole.

Senator KENNEDY. I gather you are time sensitive to that particular issue, as well.

Mr. BARR. Yes.

Senator KENNEDY. Senator Specter.

Senator SPECTER. Thank you very much, Mr. Chairman.

Mr. Barr, in 1986, the Congress passed a resolution generally in support of an international criminal court, on the ground that terrorists were avoiding prosecution. The thought was that there might be greater likelihood of extraditing or turning over a terrorist with an international criminal court, as opposed to sending

somebody back to the United States, and the Abu Abbas case was very current at that time.

In 1988, there was a similar resolution passed by the Congress supporting the creation of an international criminal court on the drug bill, because of concern at that time that the Matta case might have been one where the fugitive would have been turned over to an international court, as opposed to the great disruption which occurred in Honduras.

Last year, there was another resolution calling for a study—there are many of us who think that it is an idea worth pursuing—recognizing the difficulties of structuring all the legal procedural requirements, but that something might be structured after a Nur-emburg model. If extradition could be obtained, for example, in Colombia, where we are having such difficulties getting extradition, than that would be one alternative, or if the country would try the terrorist or the drug dealer there, that would be a desired result. But there ought to be another alternative, and that is to have an international criminal court for situations where the country was unwilling to try a terrorist or a drug dealer and was unwilling to extradite. I would be interested in your general views on this subject.

Mr. BARR. I have heard of the proposal, but I have never had the opportunity to look at it and think it through and hear from the components in the Department what the pros and cons or legal concerns or advantages might be, but I would certainly be interested in talking to you about it and finding out more about it.

It is important to me that you use the term "alternative," because my view is that the United States always has to maintain the option of unilateral action in dealing with terrorists.

Senator SPECTER. Well, I think that is true, if we have control of the situation, and I am aware of the work which your Department has done on the issue of trying terrorists under *Kerr v. Illinois*. If you have custody and can bring the individual to trial in the United States, that involves control over the issue. But where you have an Abu Abbas, where Italy won't turn him over, nor will Yugoslavia, where you have the drug dealers in Colombia, what I am looking for is an option.

Secretary of State Baker testified in response to a question about a year ago of interest in it, and I will pursue it with you later. One of the difficulties we have is that, when the issue is referred back to the bureaucracy, there is a grave reluctance to take up some of the innovative approaches which some of the policymakers see, so let's put that on the agenda for a later discussion.

Mr. Barr, it was reported that you concluded that the President could use force in the gulf pursuant to U.N. Resolution 678, without an authorization by Congress. I would be interested in your view on that subject.

Mr. BARR. This may be impertinent, but I think Senator Biden indicated to me he wanted a full explanation of this, and I am wondering just to allow me to go through it once, if we could choreograph this so that he would be here when I talk about that.

Senator SPECTER. Well, if there is any impertinence, Mr. Barr, it is probably mine, not yours. I did not know that he had raised that subject with you.

Mr. BARR. No, privately he said he wanted to get into that this afternoon, so I am—

Senator SPECTER. I will defer to Senator Biden, because I have quite a few more questions during my 10-minute period, and I will await your answer to that.

Mr. BARR. If at the conclusion he has not broached the topic, I will be glad to talk to you about it.

Senator THURMOND. Why don't you go on with your other questions?

Senator SPECTER. I am about to do that, but let me just give you my view, that the gulf was a war very much like Korea and Vietnam, and I was distressed that the Congress did not convene to take up the issue until January 10 of this year, but I find it difficult to see how the President can use force, which really is an act of war, without having congressional authorization. This is an issue which I will await your answers with Senator Biden.

The crime bill is currently pending, Mr. Barr, and I would be interested to know your views on the efforts to put a time limit on habeas corpus proceedings. Today, some cases with the death penalty go as long as 17 years. The average time is about 8½ years. A number of us have been trying to craft a compromise which would allow one full review by the Federal courts, without going through some of the maze of technicalities which the Supreme Court has currently established, but in the context where there would be a time limit, 120 days in the district court, a similar time limit in the circuit court, and a similar time limit in the Supreme Court, absent very complicated circumstances, complicating factors which would preclude that on a showing or a statement by the court that they couldn't meet the time limit.

These cases arise only about once every 18 months for district court judges, on the average, in States like Pennsylvania, Texas, Florida, and California, where there are many death penalties. I would be interested in your view about the practicality and realism of establishing some time limits on Federal review on these cases.

Mr. BARR. I would like to see time limits on the handling of habeas petitions. They have to be reasonable time limits that give the process enough time to work and be properly sequenced, but I think that might be fruitful.

Senator SPECTER. The other side of that equation is the very restrictive rules which the Supreme Court has imposed on reviewability, and there is a lot of controversy as to that.

One of the cases that came out of Pennsylvania, called *Peoples v. Pennsylvania*, involved the situation where an appeal was taken to the Supreme Court of Pennsylvania which denied review, and they can do so either on the merits or as a discretionary matter, without specifying. The case then went through the Federal court system, ended up in the Supreme Court of the United States, and they remanded all the way back, on the ground that it was not conclusive on the record that the Supreme Court of Pennsylvania had considered the merits.

So it had to go all the way back. This is a very involved subject, but I would like to discuss it with you further after you have had a chance to review it. It seems to me that if the Federal courts had a little more realistic view—what they are really doing is just wear-

ing out the system and wearing out the petitioners, because there is no reason why once it is in Federal court there shouldn't be a full and fair hearing. That is my view. But only one. Perhaps a gatekeeper approach which has been introduced where the court of appeals would decide whether a successive petition for a writ of habeas corpus should be utilized. But it is a very emotional issue, and it gets involved with a lot of technicalities. It is one which I think your Department and this committee ought to address in advance of the conference, because I think we have come up with a good crime bill which accorded due rights to the defendant and due concerns for society's issues.

So I would ask you to take a look at the *People's* case and also *Teague v. Lane*, which I am sure you are familiar with, to see if we can't craft something that would make some sense.

One of the amendments to the crime bill which I added, Mr. Barr, calls for an annual audit on forfeiture accounts which came to my attention when my wife, who is a city councilwoman in Philadelphia, sought to have some of these forfeiture moneys used in a drug-related field and found that they had been utilized instead for general purposes of the police department. On a review of the situation, I found that there was no audit, no accounting made as to precisely what the funds were used for. Those are now very, very substantial pools of money, and I would be interested in your opinion, and would like to really solicit your support for the Senate position which enacted an amendment calling for an audit on the forfeiture funds.

Mr. BARR. I think we are generally moving in that direction. I think we recognize that to maintain the integrity of the program—it is such an important program, but also recognizing it is a high-risk program—we have to take steps to make sure that the resources are being properly used. And just how far we go in auditing State and local operations ourselves versus requiring an independent audit and getting certifications as a condition, I am not sure what your proposal entails. Does it entail a Government audit or a private audit and then a certification?

Senator SPECTER. It entails a private audit and a certification. It is fairly fundamental and rudimentary—it is not very elaborate.

Mr. BARR. Yes, I think that is the direction we are going in, and I generally would support that.

Senator SPECTER. We have had considerable problems in Pennsylvania—and I think this is a national problem—in getting help from the Drug Enforcement Agency, the DEA. I would appreciate it if you would take a look at that aspect of the budgeting because in some areas like Erie, PA, for example, there has been a real need to have DEA support on a triangle among Buffalo, Cleveland, and Erie, and it has been just impossible to get the attention of the Drug Enforcement Agency. With the very substantial funding which is available there, I would appreciate your attention to see if we can't get some more assistance on that issue.

Mr. BARR. I would look into it. Is this a task force or stationing of an agent that we are talking about?

Senator SPECTER. It requires the stationing of an agent there so that there is a permanent presence and a real coordination and liaison with DEA.

Let me very briefly support what Senator Thurmond has said about the need for faster processing of the Federal judges. We have many vacancies which are present in my State and many vacancies which are present nationally. I know that there are problems on manpower. But you litigate in the Federal courts all the time. It would be very much to your interest as well as to all the litigants' interest, and would end up saving time in the long run for your FBI agents who wait around for their cases a long time because of overcrowded dockets, if we could expedite the process.

We worked through a very comprehensive judicial bill last year with many new judges, and they are still waiting. Let me strike a partially partisan note. This is November 1991. I am very much concerned that by midyear next year we are going to start to have caps placed on the number of judges who will be confirmed, as there were in 1988. So it very much behooves us to move with speed to try to get that moved forward.

Mr. Barr, I have a number of other questions on some of the specifics of the international court which I will submit in writing, and a question in writing on the pending authorization for U.S. attorney's offices in Philadelphia and perhaps some others. But the yellow light is on, and my colleagues are waiting, so I will conclude now with my thanks to you for your testimony.

Mr. BARR. Thank you, Senator.

Senator DeCONCINI [presiding]. Thank you, Senator Specter.

Mr. Barr, do you feel like continuing or do you want a little time here?

Mr. BARR. I wouldn't mind a break at some point.

The CHAIRMAN. If the Senator from Arizona does not mind, I think it is appropriate that we give our witness, if we have the time, a little break here. So why don't we recess until 10 minutes of.

[Recess.]

The CHAIRMAN. The hearing will come to order.

The Chair recognizes the Senator from Arizona, Senator DeConcini.

Senator DeCONCINI. Mr. Barr, I want to thank you—I have been observing these hearings in my office—for your candid answers to the questions that different members have been proposing here to you, and I appreciate that very much. I realize these things have got to be a trying experience. Somebody might ask why in the world would you even want the job and have to go through this. But that is a decision you have made, and I am glad that you have made it.

I want to follow up, Mr. Barr, on a question I talked to you about yesterday in response to a question regarding the turf wars or battles between Treasury and Justice. You have stated with respect to the Secret Service financial institution fraud investigations that there did not appear to you to be any problem, or at least that no one had come to you with any problem on the coordination of investigations between Justice Department and Treasury. This is really more of a request for you to review these documents that I will give you, and that is the only purpose of it, to demonstrate that I think there is a problem and I think it is worthwhile for the Attorney General to look at it.

I have copies here, which I will give to you, exchanged between the FBI field office and the Secret Service field office concerning the authority of the Secret Service to investigate financial institution fraud violations. I also have a copy of an internal memo sent to all FBI field officers from Director Sessions on this same matter. And I want to make these available to you for your review, because I believe there is a problem with respect to the FBI's interpretation of the types of criminal referrals which can be made to the Secret Service. And I would ask that you look at these and see whether or not you feel as I do that there is a flap here that ought to be smoothed out and we ought to get the maximum out of Secret Service as well as the FBI. We will deliver those to you.

Mr. BARR. Thank you, Senator.

Senator DECONCINI. Mr. Barr, the Immigration Act of 1990 authorizes and directs the Attorney General to designate temporary protected status, known as TPS, to nationals of a country currently in the United States under certain conditions. These conditions include ongoing armed conflict or extraordinary and temporary conditions in a foreign state preventing the safe return of a country's nationals. In this case, the designated country is El Salvador.

Given that approximately 200,000 Salvadorans have registered for TPS, you will be faced with a decision next year whether to continue TPS for Salvadoran nationals, and thereby extend their protection against deportation. That authority rested with the Attorney General before the Immigration Act of 1990. This just mandated that they respond to it, and the administration signed off, finally, on that legislation.

My question to you is: Do you intend to continue the administration's policy regarding TPS for Salvadorans if circumstances in El Salvador do not change when you must make the decision on this issue?

Mr. BARR. As long as the statutory standards are met and if the situation hasn't changed, then it would seem the statutory standards are met. I haven't hesitated, nor has my predecessor, to grant TPS. I think we granted it not only for the countries listed in the legislative history of the statute, but then more recently with the Somalis.

Senator DECONCINI. That is correct. You have. In this case, it has taken us some 6 years to pass this legislation because the Attorney General did not feel Salvadorans qualified—El Salvador did—for protected status. I respected that, though I didn't appreciate it. I disagreed with it.

Finally, the administration went along, as did Senator Simpson, and I am not interested in extending that legislation. What I am interested in is just bringing it to the attention of the next Attorney General that when this runs out, assuming the conditions are the same—and I hope that they are not—assuming that they are the same, that policy would not change.

Mr. BARR. That is right.

Senator DECONCINI. Now, let me ask you this question. It has recently been brought to my attention that a proposed National Drug Intelligence Center is moving forward and will be located in Pennsylvania. I have also been told that the FBI would be the Director

of this new center and that the DEA and the Department of Defense would serve as Deputy Directors.

In 1989, I called for the creation of a National Intelligence Center. However, since that time, it appears that the need for this center certainly has become questionable. And with tactical drug intelligence or the day-to-day type operations being handled by the DEA's El Paso Intelligence Center, known as EPIC, and CIA's Counter Narcotics Center responsible for strategic or long-term intelligence, what will be the mission of this National Drug Intelligence Center? Do you know anything about it?

Mr. BARR. What was the second center you mentioned after EPIC?

Senator DECONCINI. It is the CIA's Counter Narcotics Center, CNC.

Mr. BARR. Right, right.

Senator DECONCINI. Responsible for strategic and long-term intelligence on drugs.

Mr. BARR. I believe this was a DOD appropriation to establish a center in Pennsylvania.

Senator DECONCINI. That is correct.

Mr. BARR. EPIC is tactical interdiction intelligence. That is its principal function. What NDIC is supposed to provide is strategic law enforcement intelligence, and the CIA obviously has restrictions on its law enforcement role, and also there are a lot of sensitivities about using intelligence information in law enforcement files. And there are considerations that have to be given to the crosswalk between intelligence collection for foreign intelligence purposes and for law enforcement purposes. But the concept behind NDIC is strategic law enforcement intelligence.

Senator DECONCINI. Do you have any fears of duplication here between EPIC, CNC, and this new center?

Mr. BARR. I think you always have to worry about duplication or unnecessary overlap when you have a number of centers like this, but they do have discrete functions. Pursuant to the last drug strategy, we are establishing a law enforcement drug intelligence council, and that will have the Justice Department and also as the vice chair the Assistant Secretary for Enforcement from the Treasury Department and other law enforcement agencies. It is my hope that that council, among the law enforcement agencies, can help sort out and monitor the intelligence activities in the drug war.

Senator DECONCINI. Do you intend to look at this after it is established and operating? Would you consider it appropriate for you to review whether or not there is duplication here? I am deeply concerned about it, obviously, or I wouldn't be asking you the question. I have no trouble with all the intelligence we want to get together, but now to have three or maybe four different places really bothers me.

Mr. BARR. Absolutely. I will be glad to—

Senator DECONCINI. Do you know if the FBI has been designated the Director of this new center?

Mr. BARR. I think an FBI person.

Senator DECONCINI. Did you select the Director as the Acting Attorney General, do you know?

Mr. BARR. I believe I did.

Senator DECONCINI. I believe you did, too, but I don't know. I am just asking.

Mr. BARR. It was my intention——

Senator DECONCINI. Why would you select the FBI in which drug investigations is only a secondary responsibility over the DEA?

Mr. BARR. I believe that it wasn't a question of over the DEA. I am trying to improve coordination between the FBI and the DEA. I think that there are a number of functions that both agencies perform, and we should have those functions performed jointly rather than duplicative systems in the DEA and the FBI. One of those areas that I think we can achieve efficiency and also merge the activity is in the intelligence area. And DEA, as you say, has the lead in the tactical intelligence.

From my experience, FBI does an excellent job on strategic intelligence, and as part of this process of trying to draw FBI and DEA into a closer working relationship, I felt it was appropriate to have FBI take the lead on strategic.

Senator DECONCINI. Where does the Treasury Department and its drug-fighting agencies fall within this center, in your judgment?

Mr. BARR. I think they should be integrated into it. Obviously the Treasury agencies play an important part in the drug war, and in particular——

Senator DECONCINI. Is Treasury or Customs or BATF designated as a Deputy Director? I can't find out.

Mr. BARR. I will check on that. I don't think so.

Senator DECONCINI. And do you know if they have been fully involved in the design of the center and input from other law enforcement besides just FBI?

Mr. BARR. I don't know the answer to that.

Senator DECONCINI. Would you please let us know?

Mr. BARR. Yes.

Senator DECONCINI. Thank you.

Dealing with Los Angeles and its problems with police there in the wake of the Los Angeles police brutality incident involving Rodney King, your predecessor directed the Civil Rights Division head, Mr. John Dunne, to undertake a comprehensive study of similar incidents and claims. Do you know what the status of that study is?

Mr. BARR. Yes. The Civil Rights Division has reviewed the cases—I think it is 15,000. That number sticks in my head, so I will use it here—and has passed those cases and their preliminary review to the National Institute of Justice, which is preparing two reports and has increased the data base by collecting additional cases that were not available to the Civil Rights Division. So now the second phase of the study is being completed by NIJ through a competitive process where——

Senator DECONCINI. When is that likely to be finished? Do you have any idea?

Mr. BARR. I am not sure. I don't want to——

Senator DECONCINI. Would you let us know?

Mr. BARR. Sure.

Senator DECONCINI. Do you anticipate that this study would be available to Congress?

Mr. BARR. Yes.

Senator DECONCINI. And you will share it with us whenever it is finished?

Mr. BARR. Yes.

Senator DECONCINI. Because I think some of us here are interested in perhaps legislation, or at least reviewing how these occur and what could be done to be constructive at the local level.

Mr. Barr, it has been nearly 7 years since the DEA agent Kika Camarena was tortured and murdered in Mexico. I am sure you are familiar with the case. DEA's investigations into Agent Camarena's murder has led to more than 20 indictments, including several former Mexican Government and law enforcement officials.

When Judge Robert Bonner took over as DEA Director last year, he said that the investigation would continue as long as it takes to achieve justice. Drug kingpin Rafael Carlos Quintero and Felix Gallardo have been arrested, and in the case of Quintero, he has been prosecuted.

Does the Justice Department plan to seek the extradition of Felix Gallardo or any other Mexican citizen indicted in the Camarena case?

Mr. BARR. We will continue this investigation and follow the evidence and continue until we are satisfied that everyone has been brought to justice, and we will seek to obtain custody of people who were responsible for this. In the present state of affairs, it is doubtful that we would obtain extradition from Mexico.

Senator DECONCINI. You would not anticipate——

Mr. BARR. I don't anticipate that they would——

Senator DECONCINI [continuing]. Gallardo.

Mr. BARR. I think their position is that they will not extradite nationals, Mexican nationals.

Senator DECONCINI. And that would prohibit us or keep you from making such a request?

Mr. BARR. No, it wouldn't necessarily prohibit us from making such a request. We are going to try all avenues to bring these people to justice. As you may know, we have three cases pending now, including two going up to the Supreme Court, of people who were involved in the murder——

Senator DECONCINI. I don't mean to pick at this, but does that mean that extradition is under consideration by the Justice Department and that if you, and the Justice Department in particular, decide that there is merit, that you will ask for it?

Mr. BARR. Yes.

Senator DECONCINI. Is that a safe summary of what your position is?

Mr. BARR. Yes, we have——

Senator DECONCINI. And that has not been determined as of now?

Mr. BARR. That is correct. It has been determined that we want these people and we want to try these people, and the best way of getting custody of them has not been determined.

Senator DECONCINI. As I said, Quintero has been prosecuted, but Gallardo has not, and I call that to your attention for the possibility of extradition by the United States. I realize that is a judgment for the Justice Department to make.

Does it occur to you that our policy may have been to let Mexican justice do justice, instead of our extraditing, because of the difficult or embarrassing or awkward international position that might put us into?

Mr. BARR. There are Mexican citizens who were taken out of Mexico for trial in the United States.

Senator DECONCINI. Right.

Mr. BARR. The Mexican Government has objected to that.

Senator DECONCINI. Some of those were not extradited.

Mr. BARR. Correct. The Mexicans have objected to that process. They filed formal diplomatic protests. The legality of that informal rendition is now before the Supreme Court. It has been a sore point in our relations with Mexico.

Senator DECONCINI. Wouldn't it be better, if you have a sore point, to have one where you proceeded through the proper extradition requests, and then if you couldn't agree to that, at least doesn't that make more sense?

Mr. BARR. If we could get custody through extradition, it would make a lot of sense.

Senator DECONCINI. Do we know if everyone indicted in the Camarena case is in custody in Mexico?

Mr. BARR. I don't know the answer to that.

Senator DECONCINI. Could you supply us with that? I am interested in that case. Do you believe the Justice Department has done everything in its power to successfully bring every individual involved in the Camarena case to justice, or have you looked at this case at all?

Mr. BARR. I have looked at the case. I am quite interested in the case. This was a DEA agent that was tortured and killed.

Senator DECONCINI. Indeed he was, and his family happens to live in my State. You are personally involved in the case, then?

Mr. BARR. Yes.

Senator DECONCINI. And intend to continue to do so, including the question of extradition?

Mr. BARR. Yes.

Senator DECONCINI. Thank you. My time is up. Mr. Barr, I know you are going to be so glad to get out of here, so I am not going to hang around and ask you some more questions. I will submit some questions, if you would not mind having you and your people put together some answers for us.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator.

Senator Metzenbaum.

Senator METZENBAUM. Mr. Barr, it is—

The CHAIRMAN. Before you begin, Senator, I know I told you that I am going to wait until the end to ask the rest of my questions, and I have, I suspect, somewhere between half an hour and 45 minutes of questions, if that long, and I want to make sure that the Senators that remain that have questions, there is no time limitation, but do you have any rough idea how much, so we could—

Senator METZENBAUM. Just 15 or 20 minutes.

The CHAIRMAN. So, my guess is that by 6 o'clock, God willing and the creek not rising, we will be able to end this hearing.

Senator METZENBAUM. Mr. Barr, it is good to see you again. I wasn't sure I was coming back with additional questions, but the staff informed me that you would be unhappy if the hearing concluded too early, so I thought I would come over and accommodate you. [Laughter.]

The Justice Department has consistently supported ending the McCarran-Ferguson antitrust exemption for the insurance industry. Most recently, during the Reagan administration, the Justice Department testified before my Antitrust Subcommittee in favor of eliminating special antitrust protections for the insurance companies.

Charles Rule, the Assistant Attorney General of the Antitrust Division, was frank to state that there was "no justification today" for the antitrust exemption for the business of insurance. He also testified that "the insurance industry has no inherent characteristic that requires its protection from competition," and that "repeal of the antitrust exemption for the business of insurance should generate benefits for consumers."

In light of this strong statement of support from the Justice Department for repealing the McCarran-Ferguson antitrust exemption and the reasoning on which it was based, can I assume that the Justice Department will continue to support efforts to modify McCarran-Ferguson and, thereby, end special antitrust treatment for the insurance industry?

Mr. BARR. Senator, I haven't discussed this issue yet with Jim Rill, but I will tell you that my general disposition is to be very skeptical of exemptions from antitrust for sectors of industry. I think that we should rely on healthy competition, and so I am very skeptical. Someone would have to make a very compelling case for continuing an exemption from antitrust law, but I haven't explored this yet with Mr. Rill.

Senator METZENBAUM. If it is possible for you to respond to that question before the matter comes to the floor, I would be grateful to you.

Mr. BARR. Certainly, Senator.

Senator METZENBAUM. Along that line, some years ago, the distinguished ranking member of this committee and I authored legislation to provide an antitrust exemption for joint research efforts in the industry.

Mr. BARR. Yes.

Senator METZENBAUM. I thought that was far enough, not to go beyond that. There is now pending before the Congress a proposal to provide an exemption for joint production efforts. There is some division in Congress on that subject. Would you support or oppose legislation to provide an antitrust exemption for joint production efforts of industry in this country?

Mr. BARR. My understanding, Senator, is that it is not an exemption, but that it is the rule of reason test, taking it out of per se violation and treating it under rule of reason.

Senator METZENBAUM. I don't really believe that is correct. It would apply single damages, but I don't believe that—my recollection is, I don't think it refers to the rule of reason becoming applicable. I think it is an exemption along the lines of the exemption we provided for research maybe 5 or 7 years ago, and I am ques-

tioning you as to whether or not you, as the chief law enforcement officer, the chief attorney for the country, would think that serves this Nation's interests.

Some of us think that provides an almost open loophole to violate antitrust laws, although it wouldn't be a violation if you changed the law, of course, so I think your position on that is very significant, and I would appreciate your telling me what your thinking is, assuming that it is not the rule of reason about which we are speaking.

Mr. BARR. I would have to study that, Senator, but I would be certainly willing to give you my reaction after I have had a chance to look at it.

Senator METZENBAUM. Would you be good enough to do that as promptly as possible?

Mr. BARR. Certainly.

Senator METZENBAUM. Let me ask you, even though you haven't studied it, do you have an initial reaction to the idea of providing an additional exemption from the antitrust laws?

Mr. BARR. I would like to study the matter first and really see what the issues are.

Senator METZENBAUM. Do you believe consumers should have a right to buy at discount, assuming the seller is willing to sell at discount?

Mr. BARR. I am not sure what you mean by "right to buy at discount."

Senator METZENBAUM. Well, if I own a store and I want to sell to Senator Biden my product at \$65 and maybe the list price of that item is \$80, should the consumer have the right to buy it from me at \$65?

Mr. BARR. I think that discounters should be able to discount their products, but if we are getting into the resale price maintenance issue, I also think that distributors, I would be concerned about a rule that eviscerated the long-standing right of manufacturers to terminate their distributors, as long as it is not part of an agreement to enforce resale price maintenance. I believe that resale price maintenance is a violation, but I am concerned about abridging the rights of distributors. I know you have legislation in this area, and I think the Department has taken a position against it.

Senator METZENBAUM. It has passed the Senate, it has passed the House, and are you saying that if the Congress sent it to the President, that you would think that legislation ought to be vetoed?

Mr. BARR. I think there is a veto statement out on that bill, and I wouldn't anticipate changing it.

Senator METZENBAUM. Well, there is a veto statement out on just about every bill, so we can't go on that basis. [Laughter.]

Do you believe the antitrust laws—well, I will skip that. I ask you, then, do you believe that vertical price-fixing should be per se illegal under the antitrust laws?

Mr. BARR. I don't know enough about that issue to give you a response right now off the top of my head. Generally, I believe in enforcement of the antitrust laws. My view is that they are an essential tool to maintaining competition, and I am not one of those

that believes that the market itself always is self-adjusting, and certainly not self-adjusting in time to prevent harm to consumers.

If I felt that there was anticompetitive conduct going on that substantially injured competition, I wouldn't hesitate to intervene. I don't hold myself out as an expert in antitrust law, and I rely heavily and will rely heavily on Jim Rill in this area, and I am generally satisfied with the direction that he has taken things. I think he has carried out a strong enforcement policy.

Senator METZENBAUM. Mr. Barr, I think I left the resale price maintenance issue too rapidly. Under the Supreme Court decisions, as you know, resale price maintenance is per se illegal. Now, the problem has then developed as to what are the evidentiary standards that have to be used, and you indicated that there is as veto message out on it, but that was under Mr. Thornburgh, which I assume had interceded with the President.

My real question to you has to do with what does Mr. Barr think, because what we are talking about here isn't very complicated. It really has to do with whether or not I, as a local merchant, can sell my product to a consumer at whatever price I want to sell it, assuming all other things are equal, or whether a manufacturer can tell me I have to sell it or can tell me that I must sell it at a higher price.

The issue that has complicated the subject isn't whether our resale price maintenance is or is not illegal, the issue has been what is the evidentiary standard that must be used, and it is in this area that I think the position of the administration—we are in an economically distressed America, we are in an America where people are having trouble finding the money to buy the shoes for their children and clothes and a TV, if they want it, or whatever the case may be, or a new refrigerator.

The question is, Will you, as the Attorney General, support the right of individuals to buy at the lowest possible price from the distributor or the dealer, and support the concept of that individual being able to go to court to protect his or her right?

I think it is a basic question. It isn't a question of what the message is that is out there, it isn't a question of whether you believe or don't believe in RPM. The question really is will you support our clarifying the law sufficiently to make it possible for dealers to sell at the lowest price that they want to sell it to the consumer.

Mr. BARR. Senator, as I said, I am not an expert in this area, but my understanding of the issue is whether or not we are going to overrule Supreme Court cases. My understanding is that, under current law, if a manufacturer terminates a distributor on the complaint of another distributor, then that is not considered enough to establish a per se violation of resale price maintenance, that current law requires that the complaint from the complaining distributor involve some kind of agreement with the manufacturer to terminate the discounting distributor, in order to enforce resale price maintenance, and that is the standard now under Supreme Court interpretation of present antitrust law, and that what you want to do is reduce the evidentiary standard so that the complaint alone from another distributor could be taken into account, could go to the jury and there would be no requirement of having to show some kind of agreement to enforce a resale price maintenance.

So, the way I understand the issue is whether we are going to change existing law, not whether I am committed to enforcing existing law. I am committed to enforcing existing antitrust law. I believe in competition and I believe that consumers are ultimately served by maximum competition, but we do also believe, and have for a long time, that manufacturers should have a right, within certain limits, to determine who is going to be their distributor.

The way this has been explained to me by the antitrust experts in the Department of Justice is that the evidentiary standard in your bill would go so far as to really substantially impair and abridge the right of a manufacturer to terminate a distributor, and I am relying on that advice and that expertise.

Senator METZENBAUM. What we are really talking about isn't complicated. That is not the issue. The issue is really whether or not you believe in free enterprise. I happen to believe in free enterprise, and I am sure you do, and I am sure the President does. But free enterprise is meaningless, if you provide evidentiary standards that are either impossible or almost impossible for a plaintiff to maintain.

What we are talking about here is not the question of what the law is, because there is no question that resale price maintenance is illegal under Supreme Court decisions, and there is no question that, under my proposal, there must be a causal connection between the complainant and the terminator.

Now, the question really is can we get the administration to join with us in support of that free enterprise concept that makes it possible for people who are very much in economic distress or may not be in economic distress, but many are at this time, to be able to buy at a discount, without the seller being fearful of being terminated, and somehow I think there has been misinterpretation at the White House, somehow it has been made into a bugaboo that doesn't exist, but it is as pro-free enterprise as anything the U.S. Chamber of Commerce could maintain.

What I am asking you is—and I appreciate the fact that you are not an authority on this subject—but what I am asking you to do is to reevaluate this issue, so that there will not be a Presidential threat. It came about, I am sure, by reason of Dick Thornburgh's recommending that to the President. I am asking you to reexamine it personally, because I think you are an intelligent man and I think you will come to the conclusion that the right thing to do is to make it possible for the dealers to sell at a discount.

Mr BARR. I am always prepared to take another look at a legal issue and a policy issue, as well, so I will be glad to reexamine it.

Senator METZENBAUM. You are described as a conservative, I think this is a conservative point of view, but I think it has been misinterpreted by some at the White House, and I would appreciate your looking at it.

Am I all right on time?

The CHAIRMAN. Senator Leahy is here, but—

Senator METZENBAUM. I won't be too much longer.

During the last decade, an avalanche of bank mergers went virtually unchallenged by the Department's Antitrust Division. Although the Department reviewed over 9,000 bank merger applica-

tions from 1986 to 1990, it didn't bring a single court case to stop a merger.

Then, in 1990, in the face of two undeniably anticompetitive bank mergers in New England and Hawaii, the Department finally took action to block those mergers in court. Now, as you know, in the last 6 months there has been a veritable wave of consolidation and it has swept through the banking industry. The bank mergers that have been proposed include the three largest in U.S. history, Chemical Bank with Manufacturers Hanover, NCNB with C&S Sovran, and BankAmerica with Security Pacific.

According to industry analysts, over 35,000 jobs may be lost as a result of these bank mergers. In addition, bank concentration levels will literally go through the roof in many Western and Southern States, as well as the State of New York.

For consumers and for small- and medium-size businesses, consolidation of this magnitude means paying higher interest rates and finding it even more difficult to obtain bank loans. I don't have to tell you how bad the economy is, and I don't have to tell you that banks have already tightened up on their lending, without this added pressure.

The Department of Justice and the banking regulatory agencies will be reviewing every one of the proposed mergers, to determine its effect on competition generally. It is my view that the Department of Justice should take the lead role in reviewing these proposed bank mergers, to determine, among other things, how they would affect consumers and small or medium-size businesses, who are the most vulnerable customers in any banking market.

As I understand it, the President himself would reportedly agree with my view of the Department's role for bank mergers. You may recall that, in 1984, George Bush chaired a task force on regulation of financial services which recommended that "all anti-competitive analysis for bank mergers be performed by the Department of Justice, utilizing normal antitrust standards."

My question to you, Mr. Barr, is: Will the Department take an active role in bank mergers and challenge those with anticompetitive effects, whether or not it has the support of the Fed or the other banking agencies?

Mr. BARR. I think we have just demonstrated that. I believe that both the Hawaii case and the New England Bank case were cases in which the regulators approved the merger. And as you know, they were challenged by the Department of Justice. So I think under Jim Rill's leadership, the division is going to be looking at bank mergers and wouldn't hesitate to challenge them regardless of what position the Federal regulators ultimately took on it.

Senator METZENBAUM. As you know, the Antitrust Division will shortly be coming out with its analysis of the NCNB/CNS Sovran merger. Assuming that they take the position that the merger should not go through, will the Department of Justice go to court to block the merger or seek significant divestiture?

Mr. BARR. I can't answer that. I will have to wait and see what position they take and, you know, whether it is significant divestiture or some divestiture or whatever the proper resolution of their concerns might be.

Senator METZENBAUM. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Metzenbaum.

Senator Leahy.

Senator LEAHY. Thank you, Mr. Chairman.

Mr. Barr, in your earlier discussion with Senator Thurmond on habeas corpus, it left a couple questions in my mind. I share with you and others the concern about getting finality. I am not convinced that there are many criminals, especially—well, certain types of crimes, whether there is any rehabilitation that is ever going to occur within the prisons. But I do think that there is a deterrent effect, especially with some of the crimes and sentences. But that deterrent effect is diminished, and if there is any chance at rehabilitation, it is out the window if the whole time the person is there is spent in just one appeal after another. It has been my experience that they tend to forget why they are there, but their whole feeling wraps around did my lawyer wear the wrong tie this day, speak this wrong way to a juror.

I know, being here in the U.S. Senate for a dozen years or more, I pick up my hometown paper and find cases where people I had prosecuted before I came to the Senate were still going through a series of habeas corpus.

So having said that, I agree, as everybody else does, there should be finality. I am concerned, however, that with the expression of justifiable frustration on the part of prosecutors, judges, everybody else, we not throw the constitutional baby out with the bath water.

The Justice Department supported—and the reason I raise this in response to one of your answers in responding to Senator Thurmond, speaking of the crime bill that is now before us, the Department of Justice supported the provision of the Senate crime bill that bars Federal court review of any claim that has been fully and fairly adjudicated by a State court.

Now, I am told by constitutional experts in reading that, that even if a Federal court believed that a prisoner's fundamental constitutional rights have been violated—for example, by depriving him of competent counsel or by coercing his confession or by admitting a tainted identification into evidence, all things that have happened and shown up on appeals—the court would be powerless to do anything to act.

Does that come into a bit of statutory overkill?

Mr. BARR. If that is what it meant, but that is not my understanding of full and fair. Full and fair was a standard that was adopted by the Senate in 1983 and then again last year. In 1983, the Senate report actually laid out what I thought were the appropriate parameters of the full and fair standard of review. And ineffective assistance of counsel would not be precluded, would have to be considered, obviously, there would not only be procedural review, but substantive review as well.

Now, the Senate version did not have any definition of full and fair in the bill itself, and I recognize that after it passed the Senate, some groups raised concerns about the fact that there was no definition of full and fair, and it was susceptible to interpretation that would preclude appropriate levels of review in the Federal system. So I am hopeful that if we can get a crime bill out of the Conference Committee, we can work on some kind of version of habeas that would clarify that.

Senator LEAHY. Well, let us assume arguendo that the Senate bill meant the way I described it or meant what I said, that it would preclude these, would preclude reviews under these circumstances, the incompetent counsel and so on. Is my understanding correct that that is not something you would favor?

Mr. BARR. That is right.

Senator LEAHY. Would a more balanced approach to habeas reform be to enact reasonable time limits, restrict successive petitions, but protect that historic right to review of petitioners' Federal constitutional claims?

Mr. BARR. Yes. Essentially I want a rule of deference in the review. And—

Senator LEAHY. How would you describe your concept of rule of deference, Mr. Barr?

Mr. BARR. Procedural safeguard, and that there was a reasonable finding of fact and application of the law to those facts. Not complete de novo where, you know, it is a close question, reasonable men or women may differ, and even though 17 State court judges have reached this conclusion, I would have gone the other way, and so I am going to sweep aside the entire State process.

But that is essentially the standard of review that I would seek.

Senator LEAHY. Have you looked at what the Federal Judicial Conference, which is comprised of some of the most respected members of the Federal bench, have you looked at what they have said about the administration's recommendations on habeas reform?

Mr. BARR. I am not sure if we are talking about the same thing, but I did look at the fact that a number complained that the Senate version did not have a definition in it and that therefore the standard was uncertain and they were opposed to full and fair as the sole standard. And that is why we would like to work out some kind of definition in the conference.

Senator LEAHY. Do you agree with their conclusion, the one you have described?

Mr. BARR. Well, we have testified as to what we mean by full and fair, and if it is a question of pinning it down in statutory language, we are willing to do that.

Senator LEAHY. If the final version of the crime bill came out with the Senate version of habeas reform, would you favor that?

Mr. BARR. The way it has passed?

Senator LEAHY. Yes. The way it passed the Senate. If the final bill—actually I will make the question easier for you. If the Congress passed a bill just on habeas reform, separate from all the other issues that may be in the crime bill, but just on habeas reform, and it was in the form the U.S. Senate passed it in the crime bill, would you be in favor of the President signing such legislation?

Mr. BARR. Provided people understood what we meant by full and fair.

Senator LEAHY. But somebody reading it could take the same view that the Federal Judicial Conference did that the definition is not—that it is not your definition, for example.

Mr. BARR. That is an argument for putting in the definition, but as I said, we—

Senator LEAHY. That is my point. I mean, what I am saying—and this matter still has to go to conference. I am seeking perhaps some guidance before we go to conference. I have not made up my own mind whether I want to be a conferee on it or not, because I don't know whether it is going to be—what kind of an exercise it might be. But assuming I am a conferee, is it fair to say the nominee for Attorney General of the United States does not feel that the wording of the habeas provision, the wording is adequate in the Senate version and needs some work? And the conference, of course, has the ability to do that work prior to the final bill being enacted.

Mr. BARR. The wording is adequate if people mean what we think it means. This is language that has passed the Senate twice.

Senator LEAHY. Would you add to the language?

Mr. BARR. I would be willing to clarify the language if that is what it takes to get the full and fair standard, as we understand it, through.

Senator LEAHY. Do you take as a serious concern the Federal Judicial Conference's alarms that they have raised?

Mr. BARR. I took very seriously their comment that they were concerned that there was no definition of full and fair. That is how I understood the thrust of their position.

Senator LEAHY. That is not just a case of them being soft on crime or anything like that?

Mr. BARR. I don't think I have accused them of being soft on crime.

Senator LEAHY. I am not suggesting you have. I am trying to anticipate arguments others may raise. These are judges who end up having to deal with this issue day in and day out. They go across, I suppose, the ideological spectrum. But is it fair to say we should take seriously their concerns? You do; is that correct? I don't want to put words in your mouth, but do you?

Mr. BARR. I pay careful consideration to their concerns.

Senator LEAHY. Do they have merit?

Mr. BARR. You can take any statute that has been passed by Congress and say let's put in a definition of a particular term. If that is what it takes, if it is an accurate definition, then I would support that. If people are satisfied that the meaning is as we say the meaning is, then there may not be a need to define it. I am not opposed—

Senator LEAHY. We could do that with any statute, I understand. But on this particular one, do you take seriously their warning?

Mr. BARR. I think that they say that they are not satisfied that the standard is clear enough. I think it is clear, and I think the legislative history can make it clear. But I don't think the point they have raised is frivolous.

Senator LEAHY. *McCleskey v. Zant* on habeas corpus basically states a prisoner should be limited to one bite of the apple in Federal court. As I read *McCleskey*, it fairly well followed the Powell Committee's recommendation. Do you read it that way?

Mr. BARR. In what respect?

Senator LEAHY. On habeas corpus.

Mr. BARR. But I mean in what respect did they follow the Powell Committee?

Senator LEAHY. Well, that there should be this limitation on habeas, basically the one bite at the apple.

Mr. BARR. I—

Senator LEAHY. Do you recall the Powell Committee recommended that State prisoners be limited to one habeas corpus review of their constitutional claims in Federal court? Justice Rehnquist then forwarded that on to the—I believe that came down in the fall of 1989, the Powell Committee. Justice Rehnquist forwarded it to the Congress for speedy action on it. The 101st Congress declined to pass the Powell Committee's proposals. Then when the Rehnquist—the Court in *McCleskey* in effect wrote them in in the decision. Do you agree with that?

Mr. BARR. I don't know if they—I don't know—

Senator LEAHY. They took the same—they—

Mr. BARR. The general approach may be the same. I am not sure exactly what the standard—I would have to go back and look at what Powell said. There is a trap door in the one bite of the apple. It is one bite of the apple, except—and I would have to go back and look at *McCleskey* and look at Powell to see exactly what the loop-hole is.

Senator LEAHY. The Powell Committee, their recommendations were forwarded to the Congress by the Chief Justice but not adopted by the Congress. My reading, at least, of *McCleskey* is that the Supreme Court then adopted it themselves in there. If that is so, is that judicial activism on the part of this very conservative Court?

Mr. BARR. In what respect would it be activism?

Senator LEAHY. Well, it had been recommended to the Congress to do it by congressional action. We did not, so they wrote it in by judicial decision.

That is the way I have always heard judicial activism described by those who debate it.

Mr. BARR. Well, I would have to go back, as I said, and look at *McCleskey* and then look at the Powell Commission.

My vague recollection is that the standard imposed in *McCleskey* is not as strict as in the Powell Commission report. Obviously the Supreme Court can't adopt the Powell Commission report because I think the tradeoff in Powell for the limitation was States opting into the system by providing—paying for counsel. I am not sure the Supreme Court can insist that States do that or even hold that option—

Senator LEAHY. I am talking about the part of Powell which speaks to the limitations.

Mr. BARR. Again, I would have to study those limitations.

Senator LEAHY. I would be interested in your views. It appeared to me to be the same judicial activism that we are warned could happen only in a liberally oriented Court. I just wondered whether there were two types of judicial activism, good judicial activism and bad judicial activism, or whether we went to a more pure no judicial activism standard.

Mr. BARR. Well, after—

Senator LEAHY. I would be interested. Obviously your confirmation does not hang on that issue, but it would be an interesting thing if we—maybe for the sake of some in the Senate who would

give long and lengthy speeches about judicial activism, whether indeed they may have overlooked a double standard.

Mr. BARR. I will give you my reaction, Senator.

Senator LEAHY. Thank you.

Earlier this year, the Senate voted in favor of an amendment by Senator Symms that codified an Executive order and gave your office the authority to review agency regulations. The idea was to determine whether it constituted a taking under the fifth amendment. It gives the AG extraordinary authority. You can hold up legislation. In fact, you could hold up any legislation the administration didn't like. For example, the Clean Air Act or health and safety legislation requiring certain actions to be taken by people, could be held up as being a taking under the fifth amendment.

Is that just throwing in another bureaucratic layer?

Mr. BARR. I hope not.

Senator LEAHY. But what do you think about it?

Mr. BARR. Well, I think, obviously, if I remember the Symms amendment correctly, is that the amendment that says that if agency action is found to result in a taking, then the payment has to come out of the agency's appropriation?

Senator LEAHY. Basically.

Mr. BARR. Well, under the Constitution, if the government action is later found to be a taking of private property, I think, obviously, it has to be compensated. I think one way to avoid unintended takings, takings that Congress itself probably hasn't intended, otherwise the money would have been appropriated for it, that one way of handling that is to have the department responsible pay for it.

Senator LEAHY. For example, it was first proposed on wetlands legislation and then did not go on that. It was then put on the highway bill, as I understand it. It was a fairly sweeping thing and it made me go back and read, and I found where former Solicitor General Charles Fried was talking about people working with then Attorney General Meese, and he said—he was speaking specifically of young conservatives working with him, and I quote Charles Fried now—he said, "They had a specific aggressive and, it seemed to me, quite radical project in mind, to use the takings clause of the fifth amendment as a severe break upon Federal and State regulation of business and property. The grand plan was to make government pay compensation for a taking of property every time its regulations impinge too severely on a property right."

My only concern—and, obviously, anybody who has been in private practice has dealt in cases of condemnation and takings and seeking just compensation, and in my days in private practice, certainly I had cases like that for everything from building new highways to adding on to shoreline.

But the fact that the Justice Department has embraced this amendment, is this in any way a backdoor attempt to frustrate congressional intent regarding environmental and health and safety laws? For the record, what is your response?

Mr. BARR. This amendment has passed, hasn't it?

Senator LEAHY. That's right, but it was embraced at the time.

Mr. BARR. Excuse me?

Senator LEAHY. I am talking about the support that was given it at the time it was before the Congress, the strong support that was

given by the Justice Department. My concern was, because the courts—as I was just referring to earlier in the cases I have handled, as I suppose most lawyers have—the courts have always handled this question of condemnation, government taking, and there is a very solid body of law in this country. What concerned me is why the Justice Department was so eager to back this amendment to get the executive branch involved. Was that to frustrate congressional intent regarding environmental or health and safety laws?

Mr. BARR. Well, I don't think it could be to frustrate congressional intent, if Congress passes this second statute. I assume Congress' intent is that they want to avoid takings or, if takings are done by regulation, then they want it paid for.

Senator LEAHY. Why is it needed beyond what we already have? I mean it is on the highway bill now, which, of course, is tied up in conference, but when it passed the Senate, it had strong support from the Department of Justice.

Mr. BARR. My view is—

Senator LEAHY. Why do we need this extra? That is all I am trying to figure out.

Mr. BARR. My view is that it will police against unintentional takings that result in substantial cost to the government down the road.

Senator LEAHY. I'm sorry, do you want to run through that one again?

Mr. BARR. I assume that agencies have to be careful, so that they do not engage in unintended takings that lead to substantial costs down the road. If the government puts out a rule that is adjudicated to be a taking down the road, then the government is going to have to pay for it. What this statute does is say to the agencies, you had better be careful when you are framing your rules, because if, down the road, this is going to result in substantial payout by the government, it is coming out of your hide, so I assume it is there to promote more rational decisionmaking. I assume that is the reason for it, and I assume that is why Congress passed it.

Senator LEAHY. Well, Congress passed it with a very, very strong urging by the Department of Justice. I was thinking, for example, how the executive branch can get involved in rulemaking or even sometimes frustrating congressional intent. I look at what happens at EPA. The Administrator takes one position, and OMB comes in and says, whoops, a different position. Does this give those who may be opposed, in this case EPA taking environmental steps, does it give them a second ability to stop them?

Mr. BARR. I don't know the answer to that. I assume what it will mean is that people will have to focus on the potential costs or the risk of costs down the road, and since we are trying to avoid unexpected liabilities on the part of the government, it probably is a good idea.

Senator LEAHY. When the U.S. Sentencing Commission recently released a report indicating a vast majority of Federal judges opposed mandatory minimum penalties, we passed those here in Congress with a fair amount of enthusiasm, but I was kind of struck by that.

I have always taken the position that there are certain crimes I feel a mandatory minimum sentence makes sense. I argued that

early as a prosecutor and voted for some here. But I was struck by the Sentencing Commission, because half of the Federal prosecutors interviewed in the study also thought that mandatory minimums were bad policy, they thought that some were too harsh, and many resulted in too many trials.

The chief Federal judge in my State, Judge Billings, whom I have known most of my life, wrote to me and said this type of statute denies the judges the right to bring their conscience, experience, discretion, and sense of what is just into the sentencing procedure.

You must have looked at this, and I would assume the Department of Justice has an ongoing review of the question of mandatory minimum. Can you tell me your philosophy?

Mr. BARR. I have asked the Criminal Division to review the Sentencing Commission report and give me their reaction, and it is a matter I will be taking up with the U.S. attorneys, the Attorney General's Advisory Committee, which represents the U.S. attorneys, so you are correct in saying that we always have it under review.

I can tell you my general disposition, and that is that mandatory minimums are an important tool in certain limited areas, and the two areas that I think are important are drugs and guns. In the drug area, I think they are a valuable tool, because they are necessary to help dismantle drug organizations. The principal Federal role is the dismantling of drug organizations and, as you know, the way that has to be done or is usually done is from the bottom up, and mandatory minimums give the prosecutor the leverage that I think the prosecutor needs to work our way up the chain and into an organization.

I also think, given the gravity of the drug problem, that it is a strong deterrent and we need that kind of strong deterrent, and the same goes in the gun area. Those are the two areas where I am disposed to support mandatory minimums.

We also get complaints about them and we are reviewing the Sentencing Commission report. We are looking at some areas where potentially mandatory minimums may be unjustified, and I am also concerned, obviously, about prison space.

Senator LEAHY. We will agree that there is a serious question. This should not be considered as something just locked in stone and not looked at.

Mr. BARR. Oh, absolutely not. I think we have to continue to look at it.

Senator LEAHY. Let me talk about both the drugs and the guns, because these are both areas where I have supported mandatory minimums. I feel anybody using any kind of weapon in a crime, for example, should have an additional penalty separate from the crime itself for that. If they use a knife, a gun, a baseball bat in a robbery, for example, whatever the penalty is for the robbery, apply that, but then apply a separate distinct penalty for the use of the weapon. I have no problem with that.

I have no problem in taking as strong stand as we can against major drugs. But what concerns me, Mr. Barr, as we federalize more and more things that are basically State crimes—I will use drugs first—that there are some of the cases, possession cases, rela-

tively minor possession cases which would ordinarily be handled at the State level within some concept of how the State feels about them or how the prosecutors, the judges, and so on in the State feel, and I worry that there may be a temptation for an overly ambitious U.S. attorney to simply say here is a great way to make statistics, I sent 29 people to jail last month or last week or whatever the reporting period might be, and they all turn out to be relatively minor cases that normally would have been handled by the sheriffs department or the police department or the local prosecutor, and we have been handling it considerably different, the difference, however, being that, if it is handled in the Federal court, it has got a mandatory minimum, and something that might have been a fine or a very short incarceration in a State court, for precisely the same offense, becomes a serious Federal prison term.

We also have passed, and the law came out of here, we have made gas station holdup murder a Federal crime. Normally, the police departments will go after, if the gun could have conceivably have gone in interstate commerce, which virtually every gun would have, so instead of the sheriffs department or the police department or the State police or whatever going down to handle it, it can be the FBI.

There are a lot of things I would like to see the FBI go after. I think most States, most local jurisdictions, their police and their prosecutors are perfectly competent to handle gas station stickups, whether there is a murder or not, but they are not equipped to handle BCCI or handle a major drug cartel or organized crime or anything else.

Does that worry you, that perhaps we are taking valuable resources of the Department of Justice away from them, simply because it looks good in passing crime legislation here?

Mr. BARR. I think we have to be very cautious at the Federal level about federalizing activity that should be controlled by the State local enforcement authority. I think that in Federal law enforcement, we have to be constantly on our guard to make sure that our policies make some sense and that we are not out there dealing with low-level, serious, but, nevertheless, low-level criminal activity from the Federal Government standpoint, activity that could be just as effectively handled by the State.

I think we can go about that in two ways: First, I think we have to make sure that if we are employing the Federal tools on someone who may appear to be a small-time offender, it is for a specific policy objective. For example, most of the drugs distributed in Charleston, WV, I think come from Columbus, OH, and it may be that a mule coming down from Columbus, OH, to make a drug sale gets off the bus in Charleston, not carrying much, that might be a good case for the Feds to handle, because it may help us go back up the chain and find and get to the organization in Columbus.

So, we have to make sure that those kinds of cases are related to our objective of taking down drug organizations, that we are not just doing street crime to run up statistics, and I think that is a legitimate point.

Senator LEAHY. That is the concern I have.

Mr. BARR. That is why the OCDETF Program, the OCDETF Program, which, as you know, is the flagship of our antidrug effort,

now over more than the past year has made it very clear that we emphasize quality over quantity. We are not interested in running up the statistics, and performance in OCDETF is not numbers. It is the quality of the case.

So, that is a constant concern, we have to monitor it and make sure that is not going on.

The second way we attack the problem, I think ultimately, is to encourage States to get some of the same tools that we have at the Federal level. A survey of 35 States found that the average sentence for drug trafficking, not drug use, not mere drug possession, but drug trafficking, was 1.9 years. It found, for example, rape on the average of 3 or 4 years. Homicide, less than 5 years. And there is prison overcrowding in many States that contributes to that, but I think what we have to do is start encouraging States to have the same kind of tools, pretrial detention, mandatory minimums, where appropriate, sentencing guidelines and other things that make going into the Federal system less attractive, or at least not the only option you have for dealing appropriately with some of these offenders.

But I think the point you raise about not moving ahead pell-mell into federalizing State and local criminal activity is a proper point.

Senator LEAHY. I don't want to delay any further on this particular issue, but I would be interested at some time if you could have somebody from the Department of Justice come and give me a briefing on what kind of controls they have to make sure that you don't have U.S. attorneys in any part of the country or special agents in charge of the FBI in any part of the country who feel they are on a quota system, because that destroys the whole purpose of what we are trying to do in criminal legislation. Also, it destroys the whole purpose of everything we are trying to do in giving you the budget and the people you need to enforce the criminal laws, which I think you would agree with.

Mr. BARR. That's right, Senator, we are not interested in the quota system in law enforcement.

Senator LEAHY. We will arrange that at a later time.

My last question, and I will submit everything else for the record, so you can go home and see your family. Actually, none of us care to have you here any more, it is just your family that would want to see you.

Mr. BARR. I figured that out, so I sent them home. [Laughter.]

Senator LEAHY. You will hopefully follow.

Mr. Barr, a recent GAO investigation of computer security lapse revealed that the Department of Justice may have compromised highly sensitive information, when the U.S. attorneys office in Lexington, KY, sold surplus computers without first erasing that information from their memory.

In testimony before Congress, the GAO officials said, and let me quote him, "Our investigation leads to the unmistakable conclusion that, at present, one simply cannot trust that sensitive data will be safely secure at the Department of Justice." The reason I worry about that, you have—and this is something I spent a lot of time on over the past few years—the Department's responsibility in preventing terrorist attacks on our country's critical computer systems, something that could cripple us. A serious terrorist attack

could really cripple us. We have had people from the Department, experts like Robert Kupperman and others who have testified here about that. Are you confident you are good enough, not you personally, but the Department?

Mr. BARR. On security, I think there is room for improvement and I think we are moving aggressively to improve security. We did take the GAO report seriously. I think it went a little overboard in magnifying the dimensions of the problem, but, nevertheless, we do have an obligation, because of the sensitivity of our files and records, to ensure that they are secure, and we have a training program and a security program in place to upgrade it, so we are trying to respond in that area.

Senator LEAHY. Well, you have a two-edge sword here, and I don't envy the job you've got. If you are going to go after organized crime or significant crime, or sometimes even one kidnaping where a person travels across the country, being able to go to the computer and pull out everything from memos to leads has to be a tremendous tool for you.

On the other hand, if I have sensitive information that I am willing to give to you in the course of investigation on the idea that you, the Department of Justice, is going to hold it confidential, especially if I happen to be somebody in an area like organized crime, where you might be killed for giving the information, you have obviously also got to have a real concern that that is not going to go floating out there somewhere.

Mr. BARR. Absolutely, Senator. We can't operate, unless people have confidence that we can keep information secure, so that is a high priority for us.

Senator LEAHY. Mr. Chairman, you have given me a great deal of time and I do appreciate it, but these are matters, as the Chairman knows, a number of these areas I have covered in hearings earlier in years past. They are things that require an ongoing, continuous monitoring by the Attorney General, and many of them are areas that the Attorney General personally would have to make the final decision, so I did not want to simply submit them for the record, although I will have other questions for the record. I appreciate the Chairman's courtesy, as always, in giving me the time to do that, and the ranking member's courtesy, as always. I know how much he appreciates having me take time asking questions.

The CHAIRMAN. Thank you, Senator.

Senator THURMOND. We are always glad to extend any courtesy we can.

Senator LEAHY. I appreciate that.

The CHAIRMAN. Do you have any questions?

Senator THURMOND. Not right now.

The CHAIRMAN. Well, hopefully we can finish up now. As I indicated to you, Mr. Barr, I have several areas that I want to touch on. And I will try to do them as quickly as possible. I am going to take anywhere from a half hour to 45 minutes. I told you I think we will get you out by six, I think we will meet that. Would you like to take a break now, or just headon?

Mr. BARR. Let's plow ahead.

The CHAIRMAN. All right, let's do that then.

One of the things that came up during the Thomas hearing, the real hearing, the first hearing, I mean the hearing on the substance matter of his views, and I do not want to rehash that. But one of the subjects related to the takings clause and the interpretation of the takings clause. And when I raised it, I think that all but maybe you, and a half a dozen other people in America knew what I was talking about and everybody kind of wondered. But now, I am reading in the New York Times and the Washington Post and other places, this takings clause thing is an important issue, and it is a big deal.

And I want to pick up where the Senator left off when he asked you about the highway bill. The real concern is not whether or not we will have open liability. The real concern is the Government will have to pay. The intention of maybe not you, but the intention of Senator Symms is very explicit. He is not looking to save the government from potential exposure to liability. This is to make it more difficult for the government to exercise powers as traditionally exercised over the past 100 years, particularly under the exercise of authority granted by what has been known generally as police power.

When you take somebody's property under the fifth amendment, as long as you are taking it for the general welfare—I can't take it from me and give it to Senator Thurmond—but if you take it from the general welfare you got to generally pay for it.

The Government has to pay. Come back and take my backyard and put a highway through it, well, I can do that, but they got to pay me for the value of the property they took from the backyard. But if they take my property in the sense that they tell me I cannot build a five-story building on my property, it costs me money. I want to build a five-story building and my property is going to be worth a lot more money with a five-story—maybe not this economy—but generally speaking with a five-story building on it than with a two-story dwelling.

But the county or the city comes along and says, you can't do that, the zoning violation. Now, they took my property. It is exempted out, if you will, of a takings clause because it is an exercise of the police power. Now, what Senator Symms explicitly wants to do is change that; just as Mr. Macito does, and just as Mr. Epstein does, and just as the people referred to by the former Solicitor General, not by name, want to do.

And the question is, Are you one of those guys? And it is real simple. And just so you and I don't play games with one another—we never have and you never have with me—but it has nothing to do with saving the government money. It has everything to do with costing the government money and elevating private property to a status it does not now have.

Case in point: Under the takings clause you can prevent me from building a five-story building, under the Symms amendment as long as you paid me for the three stories you did not build, you, the government, paid me.

Now, we have an old expression around where I come from, "never kid a kidder." You know what it is about, and I know what it is about. It doesn't have a darn thing to do with saving the government from liability, zero. Don't you agree?

Mr. BARR. Senator, you want, if you want to know whether I am one of them—

The CHAIRMAN. No, not whether you are one of them, let's agree on the premise here. The premise has nothing to do with saving the government money. It is a very artful, lawyerly answer that you gave and I—that is why you are going to be a good Attorney General, you are sharp, you are smart. But it has nothing to do with saving the government money, does it?

Mr. BARR. I think it does but this is not an area that—when you started asking the question, I said, oh, oh, I have not looked in this area in 2 or 3 years, this is not an area that I am—

The CHAIRMAN. Well, that is reassuring to me. Because if you have not looked at it in 2 or 3 years you are "not one of them."

But seriously, I just want you to know ahead of time, I have a great concern that what is happening is there is an attempt—I think there has been a basic judgment made, and this is the only editorial comment I will make and then I will ask a question—there has been a basic judgment made and that is the Democrats have basically sat back until very recently and said, we are probably not going to have the Presidency for another decade, and the Republicans have sat back and said, we are not going to get the House and the Congress for another decade.

So how do we make sure that we get what we want done, done? Well, the Republicans have figured out a way and the Democrats have not figured it out yet. And the way is real simple, and you know it and I know it. And that is the more power that can be accrued to the executive branch the safer the issues, concerns, legitimate issues, and concerns of the conservative Republicans and the conservatives of America are. And that is what this battle going on is all about.

So, that is what the takings clause is about. The takings clause says, you do not want these Congressmen in there meddling around, passing these rules on the environment and on people passing these rules on zoning, and you know, and those kinds of things, because that takes people's property and does not pay them for it.

That allows us to regulate companies and not pay them for the cost of that regulation. And as you know, taking just doesn't mean physically taking your property. I take your property if I cause you to have to spend \$1 million to put a scrubber on top of a smoke-stack, I am taking your money.

So it leads me to this. You said in a much earlier response to one of my colleagues when they asked you about administrative agencies making judgments that arguably are at odds with congressional intent. You said, well, you implied it is not that big a problem—at least as I understand it, and I will ask you to comment—that is not that big a problem because—I believe this is a quote—because the Congress can always pass a law to change that ruling. We pass a law saying to a regulatory agency, you can't do X. We don't want the public to be able to do X, and the regulatory agency looks at it and says, well, that looks to me like they really meant they can't do X minus 7. But they can do X. So they go ahead and they do not regulate it as intended and they do not prohibit X.

We can come along and say, wait, wait, we want to clarify this. We mean X and here is the definition of X, we can pass that law. But what has essentially happened is significant power has accrued to the executive because you have to do that by a two-thirds vote.

Mr. BARR. Senator, I did not mean to suggest that administrative agencies should promulgate regulations that are not consistent with the intent of Congress.

The CHAIRMAN. No, but the question is—

Mr. BARR. I think they should and be consistent with Congress' intent that should be the guidepost for what regulations say. If there is ambiguity in the statute and an agency, using good faith in trying to handle the issue that has been given to it by Congress to handle in regulations, makes the wrong judgment there is power to correct it. But I do not think that that means that the agency should ignore in any way—

The CHAIRMAN. Well, let's make it clear though, the power to correct it is a limited power. It moves from having 50 votes to having to have 67 votes, if the judgment made—administrative agencies don't often make judgments Presidents don't want made, not often, not on the issues that are the controversial issues. Therefore, what is increasingly being done, in the last two administrations, in my humble opinion, with the acquiescence of the Justice Department has been deliberate attempts where there is any color of right at all to interpret a statute the way the administration wishes it to be interpreted, as opposed to the way the Congress intended it. If there is any little opening, that has been, that power has been exercised.

Now, we can argue whether the gag rule is one of those examples or not, but there is a number of examples well beyond the gag rule. The gag rule is a perfect case in point. Congress passed a law, Congress intended the law by obviously the overwhelming votes in the Congress in both houses on this. Clear that they intended it just like you made the comment, you said, you know, your judgment was correct on such and such a case because the Supreme Court obviously upheld that judgment.

Mr. BARR. I didn't say—

The CHAIRMAN. It's not correct.

Mr. BARR. It was a reasonable position.

The CHAIRMAN. It was reasonable. Well, obviously it is reasonable to assume that the Congress meant what it said the first time, different than what the President interpreted, by the mere fact that the Congress overwhelmingly voted, both House and the Senate, for the position they had only voted for not too many months ago.

But the big difference is we have to, in the Senate fight off a filibuster when we do it this time and we have to, in the House and Senate, get two-thirds of the vote.

Mr. BARR. There is another side to this coin.

The CHAIRMAN. I would like to hear it, that is what I want to talk to you about.

Mr. BARR. Well, part of it—Congress frequently creates this problem, itself, when passing statutes, by failing to come to a real policy decision and then throwing it in the lap of the regulators without appropriate guidance, leaving a broad area. And in my view the welfare of the country is best served by trying to hash out

these policy differences in the branch that is closest to the people, that is responsive through the political process. So it is not, in my view, simply a problem on the administrative agency side of the ledger.

The CHAIRMAN. No, I think you hit it right on the head, and that is where you and I have real disagreement. It is Congress' responsibility in areas that are of intrinsic complexity—the environment, matters relating to the Food and Drug Administration, matters relating to the FDA, I mean the FAA, matters that are extremely complex for us to make policy judgments but not to make specific case-by-case and/or specific analyses of how every case under such a policy would be handled, because if that is done, Congress is essentially paralyzed.

Let me give you a case in point. There was a big fight about odometers, about 6 years ago. Whether or not the Federal agency could make a rule saying that odometers could not be turned back by used car dealers when they sold their automobiles. They made such a judgment. What happened is that all the used car dealers, and I love used car dealers—my father was an automobile salesman his whole life, I don't mean that as any knock on them—but the used car dealers all got together and came in here and lobbied. And they got people to say obviously that agency out there is just run-amok, and so we spent 3 days, 5 days debating whether or not to roll back odometers while the country went to hell in a handbasket on the economy.

We are not capable of determining whether or not there should be 0.005 parts per billion of a carcinogenic substance in the effluent of a factory, coming out of a wall of a factory. Because if we are held to that, which is a part of the scheme that you may not be part of, a part of the intellectual construct that is underway, then that obviously is going to tie us up so long in such mire in detail that we are not going to be able to make policy judgments.

So what worries me about what you are broadly suggesting that those decisions should be made at that body closest to the people, then I think we have really tied the hands of the legislative body to be able to function.

Mr. BARR. Well, I think it is a matter of degree. Obviously Congress cannot get into the business of legislating in detail where there is an ongoing regulatory program that has to be adaptable, that has to make case-by-case decisions. It is a question of degree. And I think frankly that people would have to acknowledge that there are cases where not enough guidance is given and terms are deliberately used that are vague in order to reach a deal here and sort of leave the battle to another day.

And that happens, as you know, in the legislative process. So I am just saying that—

The CHAIRMAN. It is called the functioning of a complex society. And that is—let me move on.

Mr. BARR. Well, let me just—

The CHAIRMAN. Yes.

Mr. BARR. There was a premise originally in what you were saying which is that the fact that the Republicans control the executive or have for some time and that the Democratic Party has controlled the legislative branch is leading to—I mean the premise

seems to be sort of ingenuous lawyer's arguments made to expand the power of the executive.

The CHAIRMAN. There is no question about that.

Mr. BARR. I will tell you—

The CHAIRMAN. Maybe not by you but in the literature, I mean just pick up the literature of the Heritage Foundation, it is explicit. It is not implicit. It is explicit.

Mr. BARR. Well, I want to make clear what my position is and that is that my loyalty is to the separation of powers and the system. And when an issue is brought to me, an argument that the power is here, the power is not there, the first thing I do analytically is say, let's take the politics out of it. Let's say the shoe is on the other foot, is this a good rule?

I mean is this a rule that was intended by the Framers, is this a rule that over the long term is going to result in a system that they intended to go forward?

Let's take the line-item veto, for example. You know that there was a lot of writing in the literature among some scholars that there is an inherent line-item veto. That would have shifted a tremendous amount of power just by interpretation to the Executive. It is one, as a matter of policy, I think the Executive should have, personally. I think the President should have a line-item veto. But I looked at that issue and I looked at it hard and spent a lot of time having people research it. In fact, we went back to ancient English and Scottish constitutions and precedents and so forth. I found no basis for an inherent line-item veto in the Constitution.

So I think that what we have to look for here in separation of powers arguments is let's not have bad precedents come out of the fact that we do have a divided government and have for a period of time where one branch, where partisan politics may infect the tensions that naturally exist in our separation of powers government between two branches and let's not have bad rules over the long haul come from that. That is my major concern.

The CHAIRMAN. Well, let's talk about separation of powers. As you know, from your research, there is no reference to separation of powers in the Constitution. The phrase is never used. The only person who probably read Montesquieu was in France at the time, Thomas Jefferson, when they wrote it. And up to now it has functioned based on a relatively loose examination of what constitutes a separation of powers. There are only three parts to the Constitution, articles I, II, and III which are the basis of any argument for the separation of powers. And there is not a great deal of precision in each of those. There is no definition of what is a purely legislative, what is a purely executive, what is a purely judicial function. Except that there is a school of thought and I questioned you on this before in your last incarnation before the committee in *Morrison v. Olson* and Scalia's dissent. And Scalia is a purist when it comes to the separation of powers.

And as he applied his rationale to the independent prosecutor case he concluded that because the prosecutorial capability is a uniquely executive function, any, any impingement upon the independence of termination when to do that, is a violation of the doctrine of the separation of powers, therefore the independent counsel falls.

I am not doing full justice to the argument but in the interest of time, I hope you would agree that is the essence of his argument. Now, you said when you were before us last time and I asked you about, what page am I, page 8? I better put my glasses on. I asked you about upholding the statute of the independent counsel and you said, “* * * had entertained doubts about the constitutionality of the independent counsel statute.” This is still a quote from you, “I had thought that the statute might violate the doctrine of separation of powers by impinging upon the President’s control over prosecutorial functions. I also had thought that the statute might violate the requirements of the appointment clause. These issues were addressed in *Morrison*, and, of course, I fully accept the Supreme Court’s ruling. Constitutional issues will undoubtedly continue to arise in other applications of the statute, in particular cases. Should such issues arise, I would attempt to resolve them in a manner consistent with the *Morrison* decision.”

Now, do you still subscribe to that position?

Mr. BARR. Yes.

The CHAIRMAN. Good. Now, with regard to the phrase you use, which, as I said, I realize this is fairly esoteric for anyone who may be even hanging around this long listening, but it is fairly important, I think it is very important. You used the phrase that the statute might violate the doctrine of the separation of powers by impinging upon the President’s control.

Now, do you think if any function of one of the branches is impinged upon at all by any other branch that it violates the doctrine of separation of powers?

Mr. BARR. Part of the doctrine of separation of powers is that in some areas, power is allocated in the Constitution precisely to impinge on the freedom of action of a particular branch.

The CHAIRMAN. I can hardly think of anything, I can’t think of a single phrase in the Constitution where it is explicitly defined, any power is explicitly defined as a power of one branch or another.

Mr. BARR. Are you going to argue later that the war power is?

The CHAIRMAN. Even the war power. I want to get to that. The reason I raise is that there is, again, a whole well-informed, extremely articulate school of thought that argues that the present regulatory agencies, most of which I believe, if they got before the Court, adopting Scalia’s rationale, would all be declared unconstitutional.

I cannot think of a single administrative agency that isn’t quasi-judicial, quasi-legislative, and quasi-administrative. I cannot think of a single one. There may be one out there, but I do not know of one. And there are those who believe the government interferes in the lives of Americans too much already, are not real crazy about any of those agencies, whether it is the FDA or the FCC, or just go down all the alphabet.

Now, do you have any doubt about the constitutionality of any of the major existing administrative agencies, such as the FDA, the FCC, do you have any doubt about the constitutionality of their existence, when, in fact, they perform all three functions, most of them?

Mr. BARR. I have no interest in confronting or trying to brush aside the established case law, including *Humphrey’s Executor*—

The CHAIRMAN. I am not asking, I am not concerned about your interest. I am concerned about what you think. I am concerned whether or not you have an interest in it. Do you believe, do you doubt the constitutionality, under the separation of powers doctrine, for example, of the FDA? Do you have any doubt about it?

Mr. BARR. I haven't looked at their statute recently.

The CHAIRMAN. Do you have any doubt about the constitutionality of the FCC?

Mr. BARR. No.

The CHAIRMAN. I will get my alphabet lined up. How about the Federal Reserve?

Mr. BARR. I haven't looked at their statute recently, either. There is a distinction, it seems to me, between a question like what would you have done in some of the earlier case law regarding administrative law, what do you think was the proper interpretation of the separation of powers, versus, you know, what do you think are the rules of the game now, like on *Morrison*.

On *Morrison*, without *Morrison* being decided, I would have gone with Scalia. I thought Scalia's dissent was a good opinion. Too bad it was the dissent, as far as I am concerned, but I accept it as the law.

The CHAIRMAN. If the President asked you to pursue a litigation strategy that would challenge the constitutionality of independent agencies, how would you respond?

Mr. BARR. I would have to see if we could make reasonable good-faith arguments.

The CHAIRMAN. Well, if you accept the dissent in *Morrison* as a good-faith argument, not necessarily the law, but a good-faith argument, then I can assure you that you could make a good-faith argument, as your lawyer, I could tell you that you would be able to do that.

I knew few people up here believe it, but I will promise you that, before the next several years are out, there is going to be direct constitutional attack on the constitutionality of a number of the administrative agencies, independent, I should say, regulatory agencies, and if they fail, obviously, a great deal of power is moved to the executive branch, as a practical matter.

Let me ask you about the War Powers Act—not War Powers Act, strike that—about war power. Do you believe that the President—I am not asking what you advised or did not advise—do you believe that the Constitution required that the President seek the constitutional equivalent of a declaration of war, which he did, in order to be able to use the 500,000 troops or any portion of them in the Persian Gulf, as he used them? Is it required under the Constitution to do what he, in fact, did do, not politically, but constitutionally, was he required?

Mr. BARR. The issue of whether or not congressional action was required to proceed with the offensive against the Iraqis and the Kuwaitis looked as if it was going to arise for a period of time, because Congress initially indicated, or at least all the indications were that Congress was not going to take action before the expiration of the deadline, and that, in my view, would have put the President in a very difficult position.

But prior to the expiration of the deadline, I think it was early on in January, the leadership—during that period, it was my view that it was very important for Congress to act, so that we had both the executive and the legislative branch working together and whose views were consistent, and I was very concerned about the situation and potential constitutional crisis that could result, if we reached January 15 and Congress hadn't acted.

As I say, the leadership in Congress determined to take up the issue, and it was my view that the best thing to do would be to seek the most explicit authorization. There were some people on all different sides of the issue suggesting to leave it ambiguous, have different resolutions suggesting different things, dancing around the issue, and so forth, and my view was that we needed to seek from the Congress the most explicit authorization. Fortunately, we never got to the point—

The CHAIRMAN. But you are there now.

Mr. BARR. In a hypothetical?

Senator THURMOND. Speak a little bit louder.

The CHAIRMAN. That is a fine political judgment, and you are correct, in my view. There is no question that the country should go to war united, rather than divided, and that the President took the risk of going to war with the potential of a divided Congress, it would have been very serious, I agree with you.

With all due respect, that is not my question. Do you believe that the President was constitutionally required, under the war-making clause, the war clause of the Constitution, to get the approval of the U.S. Congress, before he would be constitutionally authorized to commit a 500,000-member force in the Persian Gulf to a war?

Mr. BARR. My view was—let me describe my thinking.

The CHAIRMAN. Sure.

Mr. BARR. I did think about this during the period where it appeared that Congress was not going to take any action whatsoever. Looking ahead, I saw that the President might be standing there with all the world supporting what we were doing collectively, and the only body that hadn't been heard from was Congress, so I tried to put myself in that position and I did do some thinking about it.

My conclusion was that this is the ultimate law school exam question on separation of powers. It has been debated for 200 years, and it will probably be debated for another 200 years, as to exact parameters of the power of Congress versus the power of the President in the war area.

I thought it was a gray zone, that the Framers had allocated substantial powers to both branches, the President as the Chief Executive and as the Commander in Chief, and Congress having the power to raise armies and navies, to make rules and fund, and that, ultimately, Congress in my view had most of the cards in the area, because of those specific powers in article I.

I think in my mind there were two fairly clear points of reference. One was that the war power, the declaration clause—I left that out, but obviously the declaration clause was assigned to the legislative branch—I thought it was clear that the President did have the power, without any preliminary congressional authorization, to respond to a sudden attack, clearly if that attack was on

the United States, he could repel such an attack, if anything, it was clear.

On the other pole, I felt it was clear that the President could not launch a purely offensive war from a cold start. He couldn't say today I feel like taking over Canada and make America the belligerent that started the hostilities.

But in between there, I felt there was a gray zone. I think the question of to what extent can the President use force to repel an attack, where armed aggression does not start with the United States, but there is armed aggression by another country that either affects the lives of Americans, the property of Americans, or the vital interests of the United States, and I think that was a gray area and an area that has been debated endlessly.

I looked then to history to give me some idea of how the system has worked over time, and, in my review of it, I felt that sort of a *modus operandi* had been worked out over 200 years of practice, where there is latitude for the President, if he believes that the vital interests of the United States are threatened by foreign military attack, there is room for him to respond, but his action is largely provisional, because it is always subject to Congress' exercise of powers.

In the years of our existence of our Republic, there have been 216 deployments of military troops by the President and 5 declared wars.

The CHAIRMAN. Those are mostly ridiculous examples that have been used, but I—

Mr. BARR. But the principle remains the same. You know, President Wilson took Vera Cruz while he was—he asked Congress, I think this was the history, he asked Congress for some authority and Congress was slow on moving on it and he decided to take it anyway, because he heard that the ship was coming into the harbor. In any event, there have been a number of—

The CHAIRMAN. Roosevelt didn't need a declaration of war, then, did he?

Mr. BARR. Excuse me?

The CHAIRMAN. Roosevelt did not need a declaration of war, did he?

Mr. BARR. No, he didn't, to repel that attack. We were attacked.

The CHAIRMAN. Well, would he have needed a declaration of war prior to the attack? He didn't need a declaration of war then to send troops to Europe, to enter the war.

Mr. BARR. Well, he took Iceland, he occupied Iceland without any authority from Congress.

The CHAIRMAN. But that is a question. Do you agree he did not need a declaration of war to enter World War II prior to Pearl Harbor?

Mr. BARR. I am focusing more on the situation where we had hostile military action by another country that affected the vital interests of the United States.

The CHAIRMAN. I can't think of anything more than Europe having affected the vital interests of the United States.

Mr. BARR. Well, there is debate as to what is the vital interest of the United States and how much exigency is needed to warrant Presidential action. But the lesson from history—and I think histo-

ry does play a role in telling us the true nature of the constitutional structure—is to take the country to war, particularly substantial engagements, requires joint action ultimately by both branches of Government and requires cooperation, and no substantial commitment overseas can be sustained for long, unless both branches of Government are working cooperatively.

The CHAIRMAN. I agree with you, that's the lesson of history and a policy lesson.

Mr. BARR. I was persuaded, when I went back and looked at the Korean war, by an article in the New York Times, when the Republicans were criticizing President Truman, and Henry Steele Cominger wrote I thought a very good article in the New York Times, making exactly this point and defending President Truman's intervention in Korea.

The CHAIRMAN. I read the same article. I have done a great deal of research on this, as well, and I think Cominger was probably wrong, and I think Truman set a precedent that was probably wrong for where we are, so we end up on different sides of that.

Let me skip, in light of time and there is a vote on here, to ask you about two other areas, very quickly. One is the area of executive privilege. Before I do that, do you think there was any merit to the argument that the President's counsel initially made when this debate started, when he came before our committee, saying that—we held extensive hearings on this issue of the constitutionality of what was required of the President to use force in the Gulf, and the argument made by the White House before the committee was that the power to declare war should be read as meaning that if the Congress wants to have a war, it can declare one, but it doesn't mean anything else, it is not a prohibition or a limitation upon the President, it is only the Founding Fathers' recognition of a grant of the power to Congress to declare a war, if the President doesn't want one, we can declare one and make the President fight it.

That was the argument used. It is the most unusual argument I ever heard, having read a lot of the literature, but was that—

Mr. BARR. I don't agree with that argument.

The CHAIRMAN. Executive privilege, in your capacity at the Justice Department, have you ever refused access to information sought by a congressional committee, on the grounds of executive privilege, or recommended that?

Mr. BARR. While I was at OLC, I did resist initial requests for information, documents that I felt were very sensitive, and was able while I was at OLC to work out compromises or accommodations in every case. While I was at OLC, executive privilege was never asserted.

I think there has been a little bit of hype about my position on executive privilege. Executive privilege is nothing new. The Office of Legal Counsel at the Department of Justice, Attorneys General and Presidents going back have invoked executive privilege.

The CHAIRMAN. I wasn't suggesting that it was new. I just wondered where you were.

Mr. BARR. I have not advanced novel arguments of executive privilege, nor is my disposition to withhold information for information's sake. My view is Congress has a legitimate interest in seeking information, that normally that proves to be no problem,

that our policy should be one of maximum accommodation, and that where we do have particularly sensitive issues—I think, for example, you would probably agree, an open criminal file and certain kinds of documents, we have a legitimate need for confidentiality, and I have always attempted to work out a compromise. While I was at OLC, and part of the business of OLC, on a daily basis, day in and day out, as you know, is to get into the middle of these fights that agencies are having—

The CHAIRMAN. That is why I asked the question.

Mr. BARR [continuing]. And I have been able to work it out.

The CHAIRMAN. On that score, let me ask two questions very quickly. I have additional questions on BCCI, but let me ask you this: You indicated, I thought early on, in response yesterday to a question by me, that you are in the process of doing a—I forget how you phrased it, but you are in the process of going back and looking over how things were handled up to the point you took over and what the course should be from here on, and that you would be willing to come back to this committee in the next couple months and discuss in detail your findings, judgments, and the state of play with regard to BCCI. I don't have any objection as—that correct?

Mr. BARR. That is not how I remember what I said.

The CHAIRMAN. Why don't you tell me? That is what I wanted to clarify.

Mr. BARR. I said I was taking responsibility, since I became involved and I will be held personally accountable for performance, and if you want to hold hearings down the road, I hope I didn't say a couple of months, several months from now to assess the progress we are making, consistent with grand jury rules and so forth, that would be fine, I would be pleased to—

The CHAIRMAN. I can tell you, we are going to kind of have to do that at some point, because, as you know, obviously, by the questions, there is a lot of concern. I don't know of anybody who said Bill Barr has withheld, Bill Barr has not done, Bill Barr—I don't know anybody who has said that, nor has it been asserted. But there is an assertion of at least—as one of my colleagues in the House has spent a lot of time looking at the Department, the way it was characterized, I cannot attest to its veracity, but they found little malfeasance, if no malfeasance—not you, the Department—but a good deal of nonfeasance. So, I am going to want to be able to do that with you after you are there.

The other thing I want to ask you about, in terms of the Congress, the refusal of the White House counsel to share FBI reports with the committee and allow designated investigators to have access to them on judicial nominees, U.S. attorneys and marshals is something that we haven't had to come head-to-head with yet, because all the ones in the pipeline are under the old regime.

I can assure you that the new proposal will not work, will not function. There has been a change in the White House, we don't even get anything other than a summary of the FBI reports, No. 1; and No. 2, the ability of me and the ranking member to sit here over the next 120 judges or so and direct FBI followups and investigations is simply not practical. It is just not possible.

And I do not say this as a threat, I don't say it as anything, I say it as an alarm bell. We have moved, it has taken the White House, on average, 10 months to come up and fill a vacancy. We fill them all on average within 10 weeks. I would hope that we could fill 100 new judges vacancies next year. I can assure you if we don't have the FBI reports, we are talking about 10 instead of 100.

This is not going to be done. I will not sit here, I just want to let you know, and I hope with your reputation for being able to work out difficult things, you will be prepared to work with the ranking member and myself on how we come up with a rational basis on—

Senator THURMOND. Can I have a word on that?

The CHAIRMAN. Sure, please.

Senator THURMOND. Mr. Barr, I agree with him on that and I wrote the White House counsel to that effect. It is impractical. It is going to delay the judges. There has been no evidence that a leak occurred from this staff, the investigatory staff on this committee, and I suggest you see if you can't get that reversed.

The CHAIRMAN. And if you do that we will see to it that you are confirmed in the next 24 hours. [Laughter.]

Senator THURMOND. I vote to confirm anyway.

The CHAIRMAN. And if you don't, we will look at your FBI report. All right, I also want to raise with you—I don't want to hold you but I have got other things—I am going to submit to you, in writing, several more questions about executive power.

It is a presumptuous thing for me to say, but I personally like you. I think you are a heck of an honorable guy. I think that you are someone we can work with and you have demonstrated that. When I say, can work with, I don't mean you do it our way, I mean when you sit down and negotiate, you genuinely negotiate.

I do, I am concerned, as I told you from the outset about one thing. And that is your view about separation of powers. I think if the Scalia view of separation of powers were the law this country would be in chaos. I feel very strongly about that, as you know, and so I am going to submit to you some additional questions on separation.

That will not hold up the consideration of your nomination, that is not what I am doing, but it will make a difference to me what I do on your nomination. That is the only thing. I found no evidence, and I have done a good deal of looking to determine whether or not you had direct responsibility on what I considered to be incompetence in the way some of the BCCI matters were handled thus far. I don't see any place, to use the expression, where your fingerprints are on any of that. I see neither malfeasance nor nonfeasance to the best that I can determine with regard to you, personally or any reason why that should be sufficient reason to hold you up, as some have suggested, until BCCI is settled.

But I do have real concern about the separations arguments but I will submit those to you in writing. And let me just double-check before I let you go. Because I hope if you are confirmed, and I expect that you will be, that we are going to see you more than once every 10 months, like the last Attorney General. At any rate just in case we won't see you in the next 10 months just let me see if I have got everything covered.

OK, and I will also have a few followup questions on BCCI but the things I wanted to satisfy myself with regarding BCCI were matters about your personal involvement, knowledge of, etc. But if you are confirmed I sincerely hope that you do take hold of this thing because you must know by now that this is an octopus that has attracted the attention, with good reason, of everyone, everyone. And it needs more than the usual business as usual way to handle it. And I don't mean to imply business as usual does not mean that things are taken care seriously. It is a different breed of cat. And I know you know that and I look forward to working with that.

Again, I have other questions, but I will refrain.

Thank you, very much for your cooperation for being here.

Mr. BARR. Thank you, Senator.

The CHAIRMAN. If confirmed, I look forward to working with you and I would hope that—I still have not given up hope on a crime bill before we leave here. I know that sounds strange. My friend, Mr. Symms, and others who have a gunner's view of the world do not want to see a crime bill but maybe we can end up overcoming that even between now and the time that we go out. And if we do it will only be with your help if we are able to. I am not making you responsible for any Senator. I don't mean that. I mean in terms of us reaching a compromises on what is out there.

Again, thank you for your cooperation.

Mr. BARR. Thank you, very much, Senator.

The CHAIRMAN. The hearing is adjourned.

[Whereupon, at 5:55 p.m., the committee was adjourned.]

APPENDIX

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full Name (including any former names used.)

William Pelham Barr

2. Address: List current place of residence and office address(es).

Office: Department of Justice
10th & Constitution Avenue, NW
Washington, D.C. 20530

3. Date and place of birth.

May 23, 1950
New York, New York

4. Marital Status (including maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).

spouse: Christine Moynihan Barr
spouse's occupation: Librarian (Elementary School)

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

Columbia College	1967 - 1971
New York, New York	A.B. 1971

Columbia University	1971 - 1973
New York, New York	M.A. 1973
	(Political Science/Chinese Studies)

National Law Center	1973 - 1977
George Washington University	J.D. 1977
Washington, D.C.	

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or

employee since graduation from college.

1971 - 1972 Central Intelligence Agency
Summer Intern Program

1973 - 1977 Central Intelligence Agency
(1973 - 75 Intelligence Directorate)
(1975 - 77 Office of Legislative Counsel)

1977 - 1978 Law Clerk to the
Honorable Malcolm R. Wilkey
U.S. Circuit Judge
U.S. Court of Appeals for the D.C. Circuit

1978 - 1982 Shaw, Pittman, Potts & Trowbridge
Washington, D.C.
(Law Firm - Associate)

1982 - 1983 Deputy Assistant Director
Office of Policy Development
White House

1983 - 1989 Shaw, Pittman, Potts & Trowbridge*
1983 - 1984 Associate
1985 - 1989 Partner

1984 - 1989 2300 N Street Associates
Real Estate Investment Partnership with a
number of other Shaw, Pittman partners

1989 - 1990 Assistant Attorney General
Office of Legal Counsel
Department of Justice

1990 - Pres. Deputy Attorney General
Department of Justice

* In connection with law practice, at Shaw, Pittman, when the firm was asked to set up a new corporation for a client, I would occasionally be listed as an incorporating director/officer for purposes of filing incorporation papers but would be replaced by the permanent director/officer at the first corporate meeting. In one case, however, I actually did serve on a client's board. In April 1986, Scottish Widows Fund Assurance Society, a U.K. insurance company, asked me to serve on the board of its two wholly-owned U.S. subsidiaries, "Dalkeith Corporation" and "1146 19th Street Corporation". These corporations own a commercial office building in Washington, D.C. I served as a director, vice president, and treasurer of each subsidiary from April 1986 to January 1989.

7. **Military Service:** Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

None

8. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe should be of interest to the Committee.

NDFL Fellowship (Mandarin Chinese)

Order of the Coif

J.D. With Highest Honors

9. **Bar Associations:** List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

Virginia State Bar

District of Columbia Bar

American Bar Association

10. **Other Memberships:** List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

American Bar Association

Knights of Columbus

11. **Court Admission:** List all courts in which you have been admitted to practice, with dates of admission and lapse if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

Virginia Supreme Court 1977 to present

District of Columbia Court of Appeals
1978 to present

U.S. District Court for the District of Columbia
1978 to present

U.S. Court of Appeals for the District of Columbia Circuit
1978 to present

U.S. Court of Appeals for the Federal Circuit
1988 to present

12. **Published Writings:** List the titles, publishers, and dates of books, articles, reports, or other published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

1. Federalist Society Symposium

Panel: Appropriations Power and the Necessary
and Proper Clause
(Reprinted Washington University Law Quarterly,
Volume 68, Number 3, 1990)

2. Los Angeles Times, September 13, 1990

Wolves Fighting Crime Go 'B-a-a-a'

3. Federalist Society Symposium
Yale Law School, February 1991

(To be published in the Harvard Journal Law &
Public Policy, January 1992)

4. Judicial Conference of the District of Columbia
Williamsburg, Virginia, Friday, June 7, 1991

Topic: Crime in the Streets: Must It Produce
Congestion in the District Courts?

5. The New York Times, September 24, 1991

Bush's Crime Bill: This Time, Pass It

6. Remarks, Multinational Conference on Asian Organized
Crime, San Francisco, CA, September 26, 1991

7. Remarks, Conference of Crime Stoppers International
Louisville, Kentucky, October 2, 1991

8. Remarks, 98th Conference of the International
Association of Chiefs of Police,
Minneapolis, MN, October 7, 1991

Note: Copies of the above items are being submitted with

this Questionnaire.

13. **Health:** What is the present state of your health? List the date of your last physical examination.

Excellent. April 5, 1991 (complete physical)

14. **Public Office:** State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any successful candidacies for elected public office.

See answer to Question 6.

15. **Legal Career:**

- a. Describe chronologically your law practice and experience after graduation from law school including:

1. Whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were clerk;
2. Whether you practiced alone, and if so, the address and dates;
3. The dates, names and addresses of law firms or offices, companies or government agencies with which you have been connected, and the nature of your connection with each;

- b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?
2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.
- c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.
2. What percentage of these appearance was in:
(a) federal court
(b) states courts of record;
(c) other courts.
3. What percentage of your litigation was;

- (a) civil;
 - (b) criminal.
4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.
5. What percentage of these trials was;
- (a) jury;
 - (b) non-jury

I attended law school at night from September 1973 to June 1977, while I was working for the Central Intelligence Agency. From February 1975 forward, I served in the Agency's Office of Legislative Counsel. My principal duties were analyzing the impact of proposed legislation on Agency operations, drafting Agency bill comments, drafting Hill testimony, carrying on liaison with Congressional committee staffs, drafting Agency-proposed legislation, and coordinating legislative activities with other agencies and OMB.

In July 1977, I left the Agency to serve as law clerk to the Honorable Malcolm R. Wilkey, U.S. Circuit Judge, U.S. Court of Appeals for the District of Columbia Circuit. I completed my clerkship in September 1978.

In October 1978, I started as an associate with the Washington, D.C. law firm of Shaw, Pittman, Potts & Trowbridge. I was the 55th lawyer at the firm. I remained at the firm as an associate until May 1982.

During this period as a Shaw, Pittman associate, I functioned largely as a generalist, with about 70% of my time devoted to litigation and about 30% to other areas of the firm's practice. The firm's clients were mainly national or large local corporations. My responses to questions no. 16 and 17 below describe some of the matters upon which I worked.

The litigation -- all civil -- was varied, although a significant part of it involved environmental cases. Virtually every case I worked on was staffed by a total of two lawyers -- one supervising partner and me. Although, in number, I handled more state court cases than federal, I devoted substantially more time to the federal cases because they tended to be more complex. Appearances in federal cases were infrequent and were generally handled by the supervising partner. I occasionally appeared in state court cases, usually to argue motions. Most of the cases upon which I worked either were settled or disposed of on motion.

One complex environmental case went to non-jury trial in federal district court. Atchison, T. & S.F.Ry.Co. v. Alexander, 480 F.Supp. 980 (D.D.C. 1979). We represented defendant-intervenor and played a substantial role in the case. I assisted the

partner who tried the case for our client. Judgment was for defendant and was upheld in all material respects on appeal. Izaak Walton League of America v. Marsh, 665 F.2d 346 (D.C. Cir. 1981). See my response to question no. 16 for further details.

An arbitration I handled went to a final award. Berlin v. Chevy Chase Lake Corp., 16 10 0071 81 (American Arbitration Association). The case involved valuation of a closely-held corporation. We represented the defendant. I assisted the supervising partner who tried the case. The final award was substantially below the amount sought by plaintiff.

Examples of some of the non-litigation matters I worked on during this period are provided in response to question no. 17 below.

In May 1982, I left Shaw, Pittman, Potts & Trowbridge to accept a position as Deputy Assistant Director for Legal Policy in the Office of Policy Development at the White House. My responsibilities included: (1) preparing briefing papers for senior White House staff; (2) coordinating preparation of briefing papers and decision documents for the Cabinet Council on Legal Policy; (3) representing the White House on inter-agency working groups and (4) reviewing agency bill comments and testimony in conjunction with the OMB process.

In September 1983, I left the White House and returned to Shaw, Pittman, Potts & Trowbridge. In October 1984, I was elected as a partner, effective January 1985. The firm currently has over 240 lawyers.

Upon returning to Shaw, Pittman in 1983, the nature of my practice was different than it was during my earlier period with the firm. I spent less time on litigation and more on administrative/regulatory matters before federal agencies. For examples of these non-litigation projects see response to question no. 17 below.

In the litigation area, while I took on fewer cases, I assumed lead responsibility on these matters. My court appearances were more frequent, either in federal court or in federal administrative tribunals. I tried one case to verdict as co-counsel in a non-jury administrative trial. (See Murray v. Henry J. Kaiser Co. in response to question no. 16 below.)

In April 1989, I left Shaw, Pittman to serve as the Assistant Attorney General for the Office of Legal Counsel. My principal responsibility in that position was the preparation of legal opinions for Executive branch departments.

In May 1990, I became Acting Deputy Attorney General. In July 1990 I was confirmed as Deputy Attorney General.

As Deputy Attorney General my responsibilities became more managerial in nature, overseeing the day-to-day operations of the Department. I served as chairman of the Economic Crime Council; the Organized Crime Council; and the Executive Review Board of the OCDETF. I also participated on the NSC Deputies Committee.

On August 15, 1991 I became Acting Attorney General.

16. **Litigation:** Describe the ten most significant litigated matters which you personally handled. Given the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- (a) the date of representation;
- (b) the name of the court and the name of the judge or judges before whom the case was litigated; and
- (c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

The following include cases that were decided on motion and some that were settled. On all the listed cases, except for no. 10, I was the sole associate, supervised by one partner. On no. 10, I was the supervising partner assisted by one associate.

1. Atchison, T. & S.F.Ry. Co. v. Alexander, 480 F.Supp. 980 (D.D.C. 1979), aff'd in part, rev'd in part sub nom., Izaak Walton League of America v. Marsh, 655 F.2d 346 (D.C. Cir.), cert. denied, 454 U.S. 1092 (1981). (District Judge: Richey) (Circuit Judges: Wright, Fabb, Penn).

Almost one-quarter of my time from October 1978 through July 1981 was devoted to defending against an action brought by 18 midwestern railroads and three environmental groups challenging, under NEPA and the APA, a Corps of Engineers' decision to construct an expanded replacement facility for Lock & Dam 26 on the Mississippi River. We represented the defendant-intervenor, Association for the Improvement of the Mississippi River ("AIMR"), an association of over 350 municipalities, businesses, farm and labor organizations, waterway carriers, and shippers that depend on waterway transportation. The case involved extremely complex technical and legal issues. Although the Corps was represented by DOJ, AIMR played a leading role in all aspects of the case. I was responsible for legal research; developing factual and expert evidence; discovery; trial preparation; drafting numerous motions, pre-trial brief, post-trial brief,

appellate brief, reply brief, and opposition to cert. petition. The trial court found for the Corps and AIMR; the Court of Appeals upheld the trial court on all material points. Government Counsel was Fred Disheroon, Lands Division, U.S. Department of Justice, Washington, D.C. Opposing counsel was Joe Karaganis, Karaganis & Gail Ltd., 150 N. Wacker Drive, Chicago, Illinois 60606 (312) 782-1905.

2. Potomac Electric Power Co. v. EPA, 650 F.2d 509 (4th Cir.), cert. denied, 455 U.S. 1016 (1981). (Circuit Judges: Widener, Phillips, Ervin).

From May 1980 through November 1980, I represented PEPCO in its petition for review of an EPA decision that the Chalk Point 4 Unit was subject to the new source performance standards for fossil-fuel steam generating units under the Clean Air Act. I was responsible for legal research and drafting a substantial portion of the brief. The Court of Appeals upheld the EPA decision. Opposing counsel was Bingham Kennedy, Lands Division, Department of Justice, Washington, D.C.

3. Group Health Ass'n, Inc. v. Blumenthal, 453 A.2d 1198 (Md.Ct.App. 1983).

From February 1981 through January 1983, I defended Group Health Association (GHA) in a negligence and wrongful death diversity action in U.S. District Court for the District of Maryland. GHA moved to dismiss on the grounds (1) that the claims were subject to mandatory arbitration under Maryland's Health Care Malpractice Claims Act, and (2) that Maryland did not recognize a wrongful death action for a non-viable child born alive. The district judge certified questions to the Maryland Court of Appeals. The Court of Appeals held for GHA that the action was subject to arbitration, but held also that an action did lie for wrongful death of a non-viable child. I was responsible for factual investigation; legal research; discovery; drafting pleadings, motion to dismiss, brief and reply brief in Court of Appeals. Opposing Counsel were Jonathan Azrael, Azrael & Gann, Baltimore, Maryland and John Jude O'Donnell, Rockville, Maryland. (301) 424-6060

4. Berlin v. Chevy Chase Lake Corp., 16 10 0071 (American Arbitration Association).

From March 1981 through March 1982, I represented B.F. Saul and Chevy Chase Lake Corporation in an arbitration over the valuation of a minority interest in a closely-held corporation. We were urging a low value. I was responsible for development of facts, legal research, all aspects of trial preparation, development of expert testimony, pre-trial brief, post-trial brief. The final award was higher than our position, but substantially lower than that urged by our opponent. The arbitrators were Daniel Coon,

David Gruber, Michael Jackley, c/o American Arbitration Association, 1730 Rhode Island Avenue., N.W., Washington, D.C. Opposing counsel was Charles Lee Eisen, Kirkpatrick, Lockhart, 1800 M Street, N.W., Washington, D.C. 20036. (202) 778-9000

5. Murray v. Henry J. Kaiser Co., 84-ERA-4 (DOL ALJ Rokentenetz, 1984).

From September 1983 through May 1984, I defended Henry J. Kaiser Co. (HJK), constructors of the Zimmer nuclear power plant, against a "whistleblower" suit brought by a discharged employee (Murray) under the Energy Reorganization Act. The case was highly sensitive because it was litigated during a pending grand jury investigation into alleged illegal conduct by HJK in the construction of Zimmer, including some of the allegations raised by Murray. (See response to question no. 17 below.) I was responsible for factual development, discovery, drafting pre-trial statement, trial preparation, and post-trial brief. The case was tried before a Department of Labor ALJ in Cincinnati, Ohio. I personally tried half the case, with a Shaw, Pittman partner trying the other half. The ALJ decided for defendant HJK. Opposing counsel was Andrew B. Dennison, 200 Main Street, Batavia, Ohio 45103. (513) 732-6800

6. Arlex, Inc. v. B. Francis Saul, et al., Law No. 19962, Circuit Court of Arlington County (1978) (Winston, J.).

From November 1978 through September 1979, I represented the B.F. Saul Real Estate Investment Trust, defendant ground lessor in a suit by lessee who operated a Howard Johnson's hotel on the leased site. The dispute was over the proper method for calculating lease payments. On March 5, 1979, the trial court granted judgment to defendant on cross-motions for summary judgment. The plaintiff petitioned for appeal to the Virginia Supreme Court, which denied the petition on March 15, 1979. I was responsible for factual investigation, legal research, preparing motion for summary judgment, preparing brief in opposition to petition for appeal in the Virginia Supreme Court. Opposing counsel was LeRoy E. Batchelor, 2060 N. 14th Street, Arlington, Virginia 22201 (703) 525-0102.

7. Rapps v. United States, et al., Civil No. 78-0612 (D.D.C.) (Parker, J.).

From October 1978 to March 1980, I defended a formal high-level CPSC official (Dimcoff) in an action brought by another former CPSC official (Rapps) against the CPSC and several current and former CPSC officials for violation of constitutional, statutory, and common law rights. The other federal defendants were represented by the Department of Justice. The case, which involved numerous complex legal issues, was settled on the eve of trial. I was responsible for factual investigation; extensive

legal research; conducting most discovery; drafting numerous motions, including motions to dismiss, motions for summary judgment, pre-trial statement, etc. During discovery, I successfully overcame a claim of newsman's privilege by a journalist witness. Plaintiff Rapps was represented by Raymond Battocchi, Cole & Groner, 1730 K Street, N.W., Washington, D.C. (202) 331-8888. The other federal defendants were represented by Lawrence Moloney, U.S. Department of Justice, Civil Division, Washington, D.C.

8. Provident Life Ins. Co. v. Life Investors, Inc., v. Equitable of Iowa Companies, Civil Action No. A 78-1061 (D.N.D.).

From October 1978 through October 1979, I represented Equitable of Iowa, third-party defendant in a 16(b) short-swing profits suit. Provident Life Insurance Co. sued Life Investors, Inc. to recover short-swing profits realized by Life Investors on the sale of Provident stock to Equitable. Life Investors impleaded Equitable as a third-party defendant. The case was settled prior to trial. I was responsible for factual investigation, discovery, legal research, legal advice on settlement. Opposing counsel for Provident Life: James Collins, Boodell, Sears, Sugrue, Giambalvo & Crowley, One IBM Plaza, Suite 2650, Chicago, Illinois (312) 782-0600.

9. Marshall v. Schlumberger Well Services, OSHRC Docket No. 79-3912, Region III (ALJ Cutler).

From October 1979 to May 1980, I represented a Schlumberger subsidiary in defending against an OSHA complaint arising from a fatal explosion at a West Virginia job site. The case was settled by joint stipulation in May 1980. I was responsible for factual investigation, legal research, pleadings, settlement discussions. Opposing counsel were Marshall Harris and Joseph Crawford, Office of Solicitor, U.S. Department of Labor, 3535 Market Street, Philadelphia, Pennsylvania 19104 (215) 596-5165.

10. Gutierrez, et al. v. U.S. News & World Report, 86 Civ. 2517 (GLG) (S.D.N.Y.) (Judge G. Goettel).

From January 1986 to March 1989, I was lead counsel defending U.S. News & World Report in a large, multi-plaintiff age discrimination suit under the ADEA. The suit arose from the termination of half of U.S. News' advertising sales force after the magazine was taken over by a new owner. I conducted and defended extensive discovery, represented U.S. News in all court appearances, drafted and argued motion for summary judgment. The motion was denied. Opposing counsel were Judith Vladeck and Anne Vladeck of Vladeck, Waldman, Elias & Engelhard, 1501 Broadway, New York, New York (202) 354-8330.

17. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

1. I worked on the following matters as an associate at Shaw, Pittman, Potts & Trowbridge. (Except where otherwise noted, I was the sole associate, supervised by one partner.)

First Pennsylvania Bank (6/80 - 9/80) Prepared legal opinion for Board of Directors of First Pennsylvania Corporation (FPC) re propriety of advancing indemnification to Board Chairman who had retained separate counsel to defend lawsuit against FPC, the Chairman, and other individuals, alleging violations of antitrust laws and the Bank Holding Company Act. I did the factual investigation, legal research and analysis, drafted legal opinion, and made part of oral presentation to the Board.

Zimmer Grand Jury Investigation (9/83 - 9/84) Spent the substantial part of a year successfully defending Henry J. Kaiser Co. in connection with a grand jury investigation into possible violations of federal law in the construction of the "Zimmer" nuclear plant in Cincinnati, Ohio. Also handled a parallel NRC investigation and three related whistleblower cases. Extensive factual investigation, witness interviews, etc.

United States v. A.B. Chance Co., Civil Action No. 80-0034-P(H) (N.D.W.Va.) (1/79 - 5/80) Represented Parkersburg, West Virginia plant charged with violating Clean Water Act. The case was settled by consent decree entered May 1st 1980. I was responsible for factual investigation, legal research and drafting pleadings. Opposing counsel was Assistant U.S. Attorney William A. Kolibash, Department of Justice, Wheeling, West Virginia.

King v. GPU Nuclear, 83-ERA-10 (Department of Labor) (8/84 - 11/84) Defended GPU in whistleblower case arising out of Three Mile Island. Extensive discovery, trial preparation. Settled on eve of trial.

American Management Systems, Inc. v. Delphi Associates, Civil Action No. 79-2467-T (D. Mass.) (1/79 - 3/82) Worked with a partner and another associate representing AMS in a suit seeking damages for breach of contract and in quantum meruit. Defendant Delphi had been prime contractor on a project to design MMIS computer system for State of Illinois. AMS sued under its subcontract with Delphi to recoup substantial losses. Participated in extensive discovery and motions. Case was settled.

Miscellaneous Litigation: (10/78 - 3/82) Handled numerous smaller cases, including defense of Group Health Association in a series of medical malpractice suits, all of which settled: Robinson v. WMATA, Civil Action No. 6610-80 (D.C.Sup.Ct.); Davis v. Patow, M.D., Civil Action No. 12220-79 (D.C.Sup.Ct.); Stribling v. Mel-Art, Inc., Civil Action No. 650-80 (D.C.Sup.Ct.). Also handled numerous smaller commercial cases which were either decided on motion or settled, including Westminster Investing Corp. v. Nordheimer, Civil Action No. 2924-80 (D.C.Sup.Ct.); Malawer & Associates v. Centennial Contractors, Inc., Chancery No. 62053 (Cir.Ct. Fairfax Cty.)

GHA Labor Matters (1979-82, 84) Represented Group Health Association in a half dozen labor disputes with its physicians' union. All involved arbitration of grievances under the collective bargaining agreement -- one major grievance related to working conditions, the others related to individual disciplinary actions. All disputes were settled prior to, or during, arbitration. Extensive factual investigation, legal research, arbitration preparation, negotiation.

Virginia Condominiums (1979) Prepared all legal documents, prospectuses, etc., in connection with three of the earliest condominium conversions under the Virginia Condominium Act. The three projects were: Horizon House, Huntington Club, and Telegraph Hill. The Horizon House documents were distributed by the state as "models".

B.F. Saul REIT (1981) Worked on various securities matters for REIT, including advice and submissions to SEC pursuant to Rule 14a-8 re omission of shareholders' proposals from proxy material.

2. I handled the following matters as a partner at Shaw, Pittman:

National Air Transportation Association (3/85 - 5/85) Represented NATA in connection with proposed IRS regulations on the use of employer-provided aircraft. Prepared and submitted formal comments.

National Automobile Dealers Association (2/85 - 4/89) Represented NADA on a variety of tax issues. In 1985 and 1986 prepared and submitted a series of formal comments on proposed IRS regulations re taxation of auto salesmen's demonstrators.

Knights of Columbus (12/84 - 4/89) Represented Knights of Columbus in connection with preserving the tax exemption for "fraternal benefit societies" under Section 501(c)(8). Prepared and submitted numerous comments during 1985 and 1986. Assisted Knights of Columbus in prevailing on Administration and House

Ways & Means Committee to preserve exemption in "Treasury II" and subsequent Tax Reform legislation.

Mutual of Omaha (7/85 - 12/85) Represented Mutual of Omaha in connection with OPM proposed regulations relating to the Federal Employees Health Benefit Program, a substantial part of the company's business. Prepared and submitted formal comments.

Carolina Power & Light (4/85 - 7/85) Researched and prepared comprehensive legal memorandum assessing CPL's potential claims against Westinghouse for installing allegedly defective generators in CPL's nuclear power plant.

Sallie Mae (1/88 - 3/88) Represented SLMA in connection with Department of Education regulations relating to due diligence requirements under the Guaranteed Student Loan Program. Analyzed potential legal challenges to regulations.

Taiwan Power (9/86 - 10/88) Represented the government-owned utility of Taiwan in connection with its pre-sanction, long-term supply contracts for Namibian uranium. Unsuccessfully sought from Treasury Department an interpretation of sanctions legislation that would allow for "in transit" processing of Taiwan Power's uranium. Also sought legislative relief.

Pico Ski Resort (6/87 - 3/89) Represented Vermont ski resort in resisting initial efforts by the Department of Interior to locate Appalachian Trail through the resort in a way that would cripple future operations. Prepared extensive submissions and presentations to DOI relating to its legal obligations under the National Trial Systems Act.

Equitable of Iowa (11/87 - 9/88) Represented Des Moines-based company in opposing a UDAG grant for the development of a major shopping mall on the outskirts of Des Moines. Prepared extensive submissions to HUD. Prepared complaint. The grant was not awarded.

U.S. News & World Report (8/87 - 9/87) Successfully assisted U.S. News in obtaining FCC recognition of exception to Equal Time rule for television series featuring David Frost interviews on Presidential candidates. Made written and oral presentations to FCC staff and commissioners.

Miscellaneous Litigation Represented Emerson Electric in prosecuting claims against the United States for "over and above" work on two defense-related contracts.

Other Legal-Related Activities In 1986 I served on two peer review panels for the National Institute of Justice. In the fall semester of 1987, I assisted a Shaw, Pittman colleague by teaching one of his Legal Research & Writing sections at GMU Law

School on a voluntary, unpaid basis. In 1985 and 1986, I spoke regularly on "The Presidency" to high school students as part of the Close-up Foundation's program.

The following are some of the significant matters I handled while serving as Assistant Attorney General for OLC:

Flag Desecration: I opined that various statutory proposals to protect the United States' flag from physical desecration would not be constitutional under Texas v. Johnson. My analysis is reflected in my testimony before the House Subcommittee on Civil and Constitutional Rights of the Committee on the Judiciary (July 19, 1989); and my testimony before the Senate Judiciary Committee (August 1, 1989).

Extraterritorial Arrests: I provided legal advice concerning the authority of the FBI, as a matter of domestic U.S. law, to make arrests overseas which do not comply with customary international law. This advice is reflected in my testimony before the House Subcommittee on Civil and Constitutional Rights of the Committee on the Judiciary (November 8, 1989).

Posse Comitatus: I advised that the restrictions of the Posse Comitatus Act do not apply extra-territorially. This advice is reflected in legal briefs, drafted in OLC and filed in the Noriega case in Miami.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

None.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

Due to the nature of my assets, I am not likely to have a financial conflict. If I do, I will follow the requirements of 18 U.S.C. §208 by either disqualifying myself or, if appropriate, obtaining a waiver.

If potential non-financial conflicts arise, I will consult with appropriate ethics counsellors at the Department. I understand the Department follows the guidelines of the Administrative Conference of the United States to resolve potential non-financial conflicts.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service in the position to which you have been nominated? If so, explain.

No.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

Please see my SF278.

5. Please complete the attached financial net worth statement in detail (Add schedules as called for).

Please see attached financial statement.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

Vice Chairman, D.C. Lawyers for Reagan-Bush, 1984
Bush for President 1988 (Vice Presidential Candidate
Screening Team)

FINANCIAL STATEMENT **NET WORTH**

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

(Rounded to nearest thousand)

ASSETS			LIABILITIES		
Cash on hand and in banks	35	000 *	Notes payable to banks—secured		
U.S. Government securities—add schedule			Notes payable to banks—unsecured	17	000
Listed securities—add schedule			Notes payable to relatives		
Unlisted securities—add schedule			Notes payable to others		
Accounts and notes receivable:			Accounts and bills due	1	000
Due from relatives and friends			Unpaid income tax		
Due from others			Other unpaid tax and interest		
Doubtful			Real estate mortgages payable—add schedule	265	000
Real estate owned—add schedule	450	000	Chattel mortgages and other liens payable	10	000
Real estate mortgages receivable			Other debts—itemize:		
Autos and other personal property	80	000			
Cash value—life insurance					
Other assets—itemize:					
Retirement Accounts	45	000			
TIAA-CREI, IRA, Keogh					
Total assets	610	000	Total liabilities	293	000
			Net worth	317	000
			Total liabilities and net worth	610	000
CONTINGENT LIABILITIES			GENERAL INFORMATION		
As endorser, cosigner or guarantor	None		Are any assets pledged? (Add schedule.)	No	
On leases or contracts			Are you defendant in any suits or legal actions?	No	
Legal Claims			Have you ever taken bankruptcy?	No	
Provision for Federal Income Tax					
Other special debt					

* See SF 278 for names of money market accounts

Real Estate Schedule

Value

Mortgage

Residence in Falls Church

\$450,000

\$255,000 (includes first mortgage and home equity line of credit)

III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

My former law partnership has, for the past several years, made substantial cash contributions to groups providing legal services to the indigent and needy. The firm also supports an active in-house pro bono program which has been widely commended in the Washington legal community.

In 1980 I reviewed and critiqued a brief prepared by another associate in a pro bono Bivens action against a government official, and I served on a mock appellate panel to prepare the associate for oral argument. (4.5 hours)

In 1981 I represented pro bono a young retarded woman who was discharged from her job at a large department store. After my calls and correspondence to the parent company, the store rehired the woman and apologized. The matter involved legal research into possible state and federal claims, drafting demand letters, etc. (9.0 hours)

In early 1982 I brought into the firm, as a pro bono matter, two Ethiopian nationals seeking asylum. The work on these cases was done by a more junior associate with expertise in immigration. One of the clients obtained asylum, the other ultimately decided not to seek it. (2.0 hours)

In 1985 I agreed to assist, on a pro bono basis, the Catholic League for Religious & Civil Rights in bringing an action challenging an A.I.D. policy which barred natural family planning groups from receiving grants unless those groups also promoted artificial methods of birth control. The matter was settled in its early stages when A.I.D. agreed to change its policy. (12 hours)

In early 1986 I assisted on a pro bono basis the Jamestown Foundation with respect to legislation to assist defectors. I also supervised an associate providing pro bono assistance to a defector. (30.50 hours)

In 1987 I assisted, on a pro bono basis, the parents' association of a parochial school in their legal efforts to keep the school from being closed. (53 hours)

2. Do you currently belong, or have you belonged, to any organization which discriminates on the basis of race, sex, or religion -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?

I am currently a member of the Knights of Columbus, which is an all-male Catholic fraternal order. I have been a member since 1984.

While an undergraduate at Columbia University (1968-71), I was a member of Sigma Nu Fraternity, a national social fraternity. It was, at least, de facto all-male, and probably was so de jure.

Responses to Additional Questions Submitted
by the Senate Judiciary Committee
to Acting Attorney General William F. Barr

(By arrangement with Committee staff, responses to additional written questions will be provided as soon as possible.)

Questions from Chairman Biden

Q: Do you support reauthorization of the Independent Counsel statute?

A: The Administration has had certain practical concerns with the statute, such as the independent counsel's budget, the extent to which independent counsel is bound by Department of Justice policies and procedures, and the scope of the statute's coverage. In general, assuming that the Administration's concerns are satisfactorily met, I expect that I would be able to support reauthorization.

Q: If the President wanted to oppose reauthorization of the statute, would you support that decision or would you advise him the statute should be reauthorized?

A: I would not raise constitutional objections to the reauthorization in its present form. Rather I would treat this matter as a policy decision. I would recommend changes in the statute to address the practical concerns noted above.

Q: Do you believe the Supreme Court's decision in Morrison v. Olson is correct as a matter of constitutional interpretation?

A: As I indicated in my testimony before the Committee, although I might have decided Morrison differently had I been a judge, I fully accept the Court's decision on the constitutionality of the independent counsel statute. Any advice I would give regarding the statute or related matters would be consistent with the Court's reasoning.

Q: If the President asked you to seek a reversal of the majority opinion in Morrison v. Olson, how would you respond to this request?

A: As I indicated in my testimony, if the President ordered the Department of Justice to ask the Supreme Court to overturn Morrison, it would do so, provided a reasoned, professionally defensible legal argument could be made.

Q: Do you doubt the constitutionality of any of the independent federal agencies?

A: Morrison and other decisions of the Court clearly support the constitutionality of independent agencies. I fully accept those decisions. As I indicated in my testimony, I have no desire to upset the administrative structure that has developed over the past century.

Q: If the President asked to pursue a litigation strategy designed to challenge the constitutionality of the independent agencies, how would you respond? Do you believe such a strategy is appropriate as a matter of constitutional interpretation?

A: I accept current law on the constitutionality of independent agencies, and, as I indicated above, I have no desire to upset the prevailing administrative structure. My advice would depend on the circumstances, and would be based largely on the trends in the Supreme Court's constitutional jurisprudence and on the Justice Department's own legal research and analysis.

Q: Assume, for the moment, that Congress enacted a law prohibiting the President from pursuing a particular course of action in the area of foreign policy.

Assume further that the President believes Congress exceeded its constitutional authority in attempting to restrict the President's conduct of foreign policy, and that he asked you to advise him on a course of action.

Would you advise the President that he should veto the legislation if he believes it is unconstitutional?

A: If the constitutional infirmities in the bill were sufficiently serious, I would urge the President to consider a veto.

Q: Are there any circumstances under which you would advise him that he could sign the law but disregard the particular provision of the law he believed was unconstitutional? If so, what are the circumstances that would justify such action?

A: That is a very difficult question, and I hesitate to opine in the abstract. Normally, the President should veto a bill containing a provision that he believes is unconstitutional in any significant respect rather than disregard that provision. There may, however, be compelling reasons for a President to sign a bill that he believes contains unconstitutional provisions. For example, President Roosevelt signed lend-lease legislation even though he believed certain provisions of the bill were unconstitutional. The President has an obligation to enforce the laws, and the supreme law is the Constitution. If Congress were

to pass a law that violated the Constitution, the President may well have an overriding obligation not to enforce the unconstitutional provision. James Wilson, one of the Founders, recognized that such a situation could arise, and more recently Attorney General Civiletti in the Carter Administration took a similar position. For example, Attorney General Civiletti concluded in Constitutionality of Congress' Disapproval of Agency Regulations by Resolutions Not Presented to the President, 4A Op. OLC 21 (1980), that a statutory "legislative veto" was unconstitutional. He stated that "the Executive's duty faithfully to execute the law embraces a duty to enforce the fundamental law set forth in the Constitution as well as a duty to enforce the law founded in Acts of Congress, and cases arise in which the duty to one precludes the duty to the other." The authority of Congress, and the judgment of Congress that a particular statute was constitutional, have to be given great respect, but it has long been the position of the Department of Justice that the President may decline to enforce unconstitutional statutes. The fact that the President has signed a bill would not preclude such action in appropriate circumstances. Cf. INS v. Chadha, 462 U.S. 919, 942, n.13 (1983). Obviously, that is not a step that any President will take lightly, and it is not a step that can be justified on the basis of a policy disagreement, as opposed to a good faith judgment that the statute is indeed unconstitutional.

Q: Are there any circumstances under which you would advise him that he could go to court and seek declaratory or injunctive relief to avoid the effect of the particular clause to which he objected? If so, what are the circumstances that would justify such action?

A: This is a difficult question, and different circumstances might require different approaches depending on the facts. If a case could be brought that did not run afoul of the "political question" doctrine and for which standing requirements were met, I would certainly consider recommending such a course of action. Recently the Administration did file such a case. (United States v. Instruments S.A., Inc. and Pisons Instruments/VG Instruments)

Q: Under what circumstances would you advise the President to assert executive privilege in response to a request from Congress to review executive branch documents or information?

A: The most direct way for me to answer your question is to quote from the current Executive Branch statement of policy on assertions of executive privilege:

The policy of this Administration is to comply with Congressional requests for information to the fullest

extent consistent with the constitutional and statutory obligations of the Executive Branch. While this Administration, like its predecessors, has an obligation to protect the confidentiality of some communications, executive privilege will be asserted only in the most compelling circumstances, and only after careful review demonstrates that assertion of the privilege is necessary. Historically, good faith negotiations between Congress and the Executive Branch have minimized the need for invoking executive privilege, and this tradition of accommodation should continue as the primary means of resolving conflicts between the Branches. To ensure that every reasonable accommodation is made to the needs of Congress, executive privilege shall not be invoked without specific Presidential authorization.

This statement is from a November 4, 1982 memorandum from President Reagan to the heads of the Executive departments and agencies. The memorandum is being following by the Bush Administration.

I want to stress one point from the memorandum. The Executive Branch is committed to engaging in an accommodation process when Congressional committees seek confidential information. As I stated in my testimony, I fully share this commitment. The agencies work with committees to develop means of providing information the committees need while protecting Executive Branch confidentiality interests. Experience has shown that good faith communications between agency and Congressional staff resolve almost all difficulties as they arise. Only in exceptional circumstances has it ever been necessary to request that the President assert the executive privilege with respect to a Congressional request. As I testified, during my tenure as Assistant Attorney General for the Office of Legal Counsel, there were no assertions of executive privilege.

Q: If you were asked to provide the administration with a legal opinion setting forth the scope of the executive privilege and guidelines for when it should be asserted, what would that opinion say?

A: Obviously, any such legal opinion would need to discuss the constitutional principles and precedents in detail. I can say here, however, that in order to discharge faithfully its constitutional and statutory responsibilities, the Executive Branch must seek to protect certain confidential information. Examples of confidential information include national security information; materials that are protected by statute, such as the grand jury secrecy rule of the Federal Rules of Criminal Procedure; information the disclosure of which might compromise open investigations or prosecutions or civil cases; and pre-

decisional deliberative communications, such as internal advice and preliminary positions and recommendations.

I should reiterate the point I made in answering the previous question on executive privilege. The Executive Branch is committed to seeking to accommodate the information needs of Congress. We are almost always able to accommodate those needs, even when the Congressional requests seek confidential information. Accommodations can be structured in ways that provide Congress the information it needs for its legislative purposes while preserving essential confidentiality. As for when executive privilege should be asserted, the Reagan Memorandum states the longstanding policy that "executive privilege will be asserted only in the most compelling circumstances, and only after careful review demonstrates that assertion of the privilege is necessary." These principles are also spelled out in a memorandum that I prepared for the General Counsels Consultative Group dated June 19, 1989.

Q: Will you ensure that the Department of Justice cooperates fully with the Congressional committees now or in the future investigating the SCOTI matter, by making all documents and other relevant information available as requested by those committees?

A: The Department has spent hundreds of hours over the last several months responding to document requests by congressional committees and making witnesses available for staff interviews. All requested witnesses from the Department have been interviewed, sometimes at great length, by congressional staff. The Department has fully complied with all document requests from the Senate subcommittee; one recent request from the House Judiciary Committee, Subcommittee on Crime and Criminal Justice is still outstanding.

As Congress has long recognized, the Department must take special care in responding to requests for information concerning open investigations. Under the circumstances, I believe that we have been as forthcoming as possible. Indeed, Representative Schumer's staff has commended the Department for its cooperation in arranging interviews in connection with their investigation, and we intend to continue that attitude toward other investigations. There has been no effort to suppress information for any inappropriate reason. The sole interest of the Department has been to protect ongoing investigations and other confidential law enforcement information. I will ensure cooperation consistent with my obligation to ensure the integrity of the law enforcement process.

Q: Do you intend to continue the apparent policy of your predecessor that if a prospective judicial nominee consents

to an interview with a local bar association, that person's judicial nomination will necessarily be imperiled?

Do you have any meetings currently scheduled with representatives of local bar associations to discuss and address the subject of local bar associations involvement in the judicial nominations process?

A: As I testified, I am currently reviewing this matter and will be meeting with representatives of bar associations to discuss the issue.

Questions from Senator Kennedy

Q: Late last year, the State Department and our military evacuated to the United States around 700 families from Kuwait, mostly Palestinians. Most of these families had U.S. citizen children, so were of great concern to the United States. And many at great risk to themselves had also hidden Americans from Iraqi forces.

While many do have Jordanian passports, they really have nowhere to go. And so many of them have performed a great service in protecting American lives in a time of acute conflict with Iraq.

I believe the Administration should comprehensively address the immigration status of these families to whom the American people owe so much. Immediate steps should be taken to assure them that they will not be removed from the United States and those who qualify for permanent residence will be assisted in the processing of their applications.

But furthermore, I believe that legislation should be enacted to provide permanent status to those who may not qualify for adjustment of status under existing criteria.

Would you support such actions?

A: It is my understanding that the President will make an announcement in the near future concerning the deferral of departure of Persian Gulf evacuees. I would be happy to comment on this matter after that announcement.

Questions from Senator Metzenbaum

Q: Do you believe OSHA's criminal penalty provisions presently serve as an effective deterrent?

. . .

Overall, do you believe these stronger penalties would improve the deterrent effect of the OSH Act's criminal provisions?

A: The Department has determined that OSHA criminal penalties are insufficient for wilful conduct that leads to loss of human life, and has supported proposed legislation that would have increased the penalty for such behavior from a misdemeanor to a felony. In a letter to Congressman Tom Lantos dated January 16, 1990 from Carol T. Crawford, then Assistant Attorney General for Legislative Affairs, the Department's position was set forth. That position is unchanged and the Department is aggressively addressing regulatory enforcement at this time.

Enforcement relating to life or health endangering violations in the workplace is one of the initiatives of the Department's Criminal Division. The Criminal Division is wholly committed to enforcement in this area because of the serious, and sometimes potentially catastrophic, consequences that can result from such violations. This initiative focuses on violations of regulations promulgated by the Nuclear Regulatory Commission (NRC), OSHA, and Mine Safety and Health Administration (MSHA).

The objectives of the initiative may be summarized as follows: The General Litigation Section processes promptly all investigative referrals from the regulatory agencies and refers to the appropriate U.S. Attorneys' offices those referrals which can be adequately addressed by those offices. The General Litigation Section analyzes the prosecutive merit of all other referrals, declining those for which no action is required due to a lack of evidence of wilfulness or intent, and pursuing (either directly or by monitoring the efforts of U.S. Attorneys) the more complex referrals. The Criminal Division currently has numerous cases in this area under investigation. Examples of the demonstrated commitment by the Department are the following:

- October 21, 1991 thirty-three coal companies and forty-two individuals were charged and pled guilty in the Western District of Virginia to violations charging a conspiracy to defraud MSHA in the operation of the respirable dust testing program required by Title 30. Two individuals pled to RICO violations in connection with the scheme.

- On May 2, 1991, ABC Utilities and Bruce Shear were convicted in the Southern District of Texas of Occupational Safety and Health Administration Act violations resulting from a fatal trench collapse in Texas. The conviction is significant because Shear is the first nonowner/employer defendant convicted under the Act.
- The Mine Safety and Health Administration, the Criminal Division, and the U.S. Attorney's Office for the Western District of Kentucky are conducting a thorough investigation into the explosion at the William Station Mine, Pyro 9 Slope, that killed 10 miners in 1989.
- On August 21, 1989, Harrell Murray pled guilty in the Western District of Virginia to a violation of the Atomic Energy Act, 42 U.S.C. 2273, a felony. The charge resulted from Murray's injection of overdoses of radioactive drugs into hospital patients.
- On June 26, 1989, Howard Elliott pled guilty in the District of South Dakota to a one count information charging him with a criminal violation of the Occupational Safety and Health Administration Act in that he failed to follow trenching safety standards resulting in the death of two workers and serious injury to another worker. Mr. Elliott was sentenced to six months imprisonment. The prosecution was the first under the Occupational Safety and Health Administration Act in which the defendant was sentenced to incarceration.

The information requested by Senator Matzenbaum in his further questions on this subject will be provided as expeditiously as possible.

Q: Will the Justice Department appeal the district court's decision [in United States v. Burlington Northern Railroad Co., regarding the enforcement of a subpoena issued by the Inspector General of the Railroad Retirement Board]? If not, why not?

A: Yes.

Q: As Attorney General, will you vigorously protect the "audit" authority of the Inspectors General?

A: Yes.

Questions from Senator Leahy

Q: What is the current status and scope of the FBI's Library Awareness Program? When was the effectiveness of the program reviewed by your office? What was the result of that review?

A: The FBI's New York Office discontinued making contacts pursuant to the Library Awareness Program over three years ago. Total contacts under the Program numbered approximately 20 and were limited to scientific and technical libraries in the New York area. There are no plans to resume contacts of libraries for this purpose.

Because the FBI is no longer contacting libraries pursuant to the Library Awareness Program, the Department of Justice did not conduct a review of the effectiveness of the Program.

Q: In September 1988, the Director of the FBI criticized the investigation of the Committee in Solidarity with the People of El Salvador. What steps has the Department taken to ensure that this type of violation of citizens' constitutional rights does not happen again?

A: In November 1987, Director Sessions ordered the FBI's Inspection Division to conduct an in-depth inquiry into the CISPES investigation conducted by the FBI. That inquiry revealed that although there had been no violations of individual rights, there were areas of policy and procedures that could be strengthened to preclude future problems such as occurred in the CISPES investigation. As a result, the Director made 33 separate policy changes primarily designed to strengthen oversight and approval of international terrorism investigations and the use of informants or assets.

In addition, the Attorney General, at the Director's request, formed a working group to examine the Attorney General's Foreign Counterintelligence Guidelines as they apply to international terrorism cases. The working group, chaired by Mary Lawton, Counsel for Intelligence Policy, recommended a number of modifications to the Guidelines, all of which the Attorney General adopted. These changes tightened definitions and clarified the applicability of portions of the Guidelines to international terrorism investigations involving groups.

As a result of these changes, international terrorism cases receive greater Headquarters oversight and must be more tightly focused. The Foreign Counterintelligence Guidelines are more specific, especially as to "groups" and any aspect of a

investigation involving First Amendment activities must be specifically reviewed.

The inquiry conducted by the FBI's Inspection Division, the policy changes by the FBI Director and the Guideline changes by the Attorney General received intense scrutiny by both the House and Senate Intelligence Committees and the House Judiciary Subcommittee on Civil and Constitutional Rights.

Q: In a speech you gave last month, you stated that the high prison population in the United States is "a sign of success." Today there are more people incarcerated per capita in the United States than in any country in the world.

Isn't that statistic a measure of our society's failure to provide realistic, desirable opportunities for people to participate and contribute to society? Isn't it a measure of our society's failure to provide basic education and economic opportunity to our young people, to counsel our children against substance abuse and to establish adequate drug treatment programs?

A: In my speech I did not say, and I do not believe, that any single approach can stop crime. I noted, for example, that "[i]n the long-term, only by strengthening our values can we triumph over violence" and that "family, church, and civic institutions are the building blocks of a solid community" because they transmit the values on which a just and safe society ultimately rests.

I agree that we should seek to expand economic and educational opportunities and to provide counseling about substance abuse and treatment for drug addiction. The Administration has programs that address all of these areas.

Nevertheless, although law enforcement alone cannot solve the problem of violent crime, the struggle against crime cannot succeed without vigorous law enforcement. Social programs cannot succeed in an atmosphere of violence. As I said in my speech, the best way to protect the public against habitual criminals is to keep those criminals off the streets by locking them up. The increase in the prison population shows that violent criminals are being caught, convicted, and removed from society. While the prison population grew in the 1980's, the staggering increases in crime that afflicted the 1960's and 1970's were brought to a halt. In this sense, a high prison population is indeed a sign of success in our law enforcement efforts.

Responses to Additional Questions Submitted
by the Senate Judiciary Committee
to Acting Attorney General William P. Barr

(The responses provided below are in addition to the responses provided to the Committee on November 14, 1991.)

Questions from Chairman Biden

Q: [The Bureau of Justice Statistics 1990 National Crime Survey] is supposed to tell the nation just how many crimes were committed. Is that your understanding?

A: The annual National Crime Victimization Survey (NCVS) attempts to measure personal and household offenses, including crimes not reported to the police, by interviewing all the occupants of housing units age 12 or older, who have been selected to comprise a representative sample. Each person interviewed is asked about the crimes he or she may have experienced over the previous 6 months. The survey is an essential tool in understanding the impact of crime on our society. Obviously, any crimes that victims are unwilling to describe to the survey interviewer are not reflected in the survey results.

Q: If confirmed, will you base the Justice Department's attack on rape on the national total indicated by the victimization survey? Or, on the survey's indication of a decline from 1989 to 1990?

A: Any occurrence of rape is unacceptable. Correspondingly, the Department of Justice is committed to aggressively attacking the complex problems of rapes and sexual assaults in all instances. I strongly support the activities of the Office of Victims of Crime, various national organizations and others engaged in promoting wide-ranging programs and reforms for this purpose.

Q: [A]re you telling us that you believe 8 of every 10 rapes are reported to the police? If not, what is your estimate of the number of rapes that are not reported to the police?

A: According the NCVS data, violent crime victims generally report only about half of their victimizations to the police. In some cases, rape victims do not reveal the crime to anyone. In yet other cases, some victims may have reported the crime to the police but are unwilling to discuss the crime with anyone else, including a survey interviewer.

Much of the apparent discrepancy between NCVS rape victimizations and Uniform Crime Reports (UCR) counts of rape reported to the police are within the wide confidence intervals statistically applied to NCVS rape estimates. Furthermore, data from several states indicate a significant number of rape victims are under 12 years of age, thus representing a category of victims not included within the NCVS. Again, while surveys and law enforcement reports provide extremely important data on rape trends and incidence rates, neither source can provide exact measures of the annual occurrence of these terrible crimes.

Q: If confirmed, what priority will you place on this re-design of the survey?

A: The Bureau of Justice Statistics has vigorously pursued the re-design of the rape question on the NCVS to attain a better measurement of this crime. If confirmed, I will place a high priority on obtaining accurate data on the occurrence of rape and all other crimes.

Q: The Drug Use Forecasting system undertaken by the National Institute of Justice is, I believe, one of the most valuable tools the federal government has for detecting and assessing trends in drug use.

If confirmed, will you support continued expansion of the Drug Use Forecasting program?

A: The Drug Use Forecasting (DUF) system of the National Institute of Justice provides this country's first objective measure of recent drug use by people arrested for serious crimes, and I support it fully.

Q: The Senate-passed crime bill included the "Police Officers' Bill of Rights" (S. 1241, Title IX). This bill would provide certain procedural protections for police officers in disciplinary proceedings. This bill does not, however, address the issue of actions against police officers for criminal misconduct.

What is your view of the need for federal legislation to guarantee procedural protections -- such as those included in the "Police Officers' Bill of Rights" -- to police officers subject to disciplinary proceedings?

A: Although specific procedures for the investigation and adjudication of such cases are the responsibility of state and local governments, and I would resist federal involvement in labor/management issues in local law enforcement, I strongly support general principles of fairness in disciplinary procedures pertaining to law enforcement misconduct.

Q: The Administration's fiscal 1992 budget proposed to slash the funding for the Office of Juvenile Justice and Delinquency Prevention from \$70 million to \$7.5 million. Do you support this reduction?

A: The Office for Juvenile Justice and Delinquency Prevention (OJJDP) should continue to fund numerous demonstration, research and evaluation efforts through its discretionary grant program. OJJDP, through this program, provides services to juveniles that are very important and funds projects that have a significant impact on high risk youth.

Since the inception of OJJDP's grant program in 1975, more than \$1.2 billion has been appropriated for the program, of which more than 60% (almost \$781 million) went to formula grants. The states have made progress in meeting the legislative goals (deinstitutionalization of status offenders, separation of juveniles from adults in secure institutions, and removal of juveniles from adult jails and lock-ups) under the formula grant program. Fifty-one states and territories (of 56 participating in the formula grant program) are in full compliance with the deinstitutionalization of status offenders mandate. Therefore, I think we are at a point where it is important to reexamine the level of funding provided to OJJDP and the methods by which OJJDP funds programs that address the needs of juveniles. Given the fact that Congress has repeatedly rejected efforts to shift funding to the states I would support continued federal funding.

Q: According to the Justice Department, not one single program that directly or indirectly provides drug treatment or prevention services for juvenile offenders would be targeted for elimination or reduction in funding.

Please provide a specific listing of the juvenile justice programs that are targeted for elimination or reduction under the Administration's fiscal 1992 budget.

A: The Office of Juvenile Justice and Delinquency Prevention's FY 1992 appropriation is \$76 million. The Administration's proposed 1992 budget request for OJJDP was \$7.5 million. The \$7.5 million requested, together with a 50% match from grant recipients, would have provided \$15 million for the juvenile justice high risk youth program. At either level, it was and is not anticipated that any programs, directly or indirectly, providing drug prevention or treatment services for juvenile offenders would be targeted for elimination or reduction in funding in 1992.

Q: Funds are badly needed for counseling and treatment for drug involved youth. The Boys and Girls Club of America is an example of a highly successful organization that has

helped provide alternative, constructive activities that prevent youth from joining gangs.

According to the Justice Department, the Boys and Girls Club "Targeted Outreach" program enjoys a 93% success rate in the number of youth who have avoided reinvolvement with the juvenile justice system. Another survey reported that three out of four Club alumni believe their Boys and Girls Club experience helped them to avoid difficulty with the law.

Does the Justice Department intend to continue its support of organizations like the Boys and Girls Club of America?

A: Yes. On December 11, we will be presenting \$2.5 million to the Boys and Girls Club to expand the number of Clubs in public housing projects throughout the country. We are also interested in working with organizations such as the Boys and Girls Club in our Weed and Seed initiative.

Q: What effect will the proposed budget cut have on the Boys and Girls Club of America's 5-year plan to expand services to include an additional 700,000 youth?

A: None. Funding for the Boys and Girls Clubs program is available in 1992.

Q: I have expressed my concern about the problems of drug trafficking and violent crime in rural America. Accordingly, I have proposed a significant expansion in federal efforts to fight these problems, including boosting the number of DEA agents in rural areas; creating rural drug task forces composed of federal, state and local officials; and boosting direct federal aid to law enforcement agencies.

What is the Justice Department doing at this time to address this serious problem?

A: I strongly support ensuring adequate resources for rural drug enforcement. We sought expansion through OCDETF's heartlands program and DEA was planning on allocating 50% of new agents in FY 92 to rural areas. Unfortunately, budget cuts have seriously impacted both initiatives.

Q: Do you support my efforts to increase the number of DEA agents assigned to rural areas?

A: Yes.

Q: Do you believe that small, rural law enforcement agencies are capable of attacking the increasing number of large, regional and interstate drug trafficking rings that operate in rural areas?

A: No. I am committed to the expansion of the DEA State and Local Task Force program which provides much needed federal resources and expertise to assist local communities in meeting these challenges.

Q: What is your position with respect to my proposal to create federal-state-local drug enforcement task forces in rural areas? Do you believe that agencies other than DEA, e.g. the Bureau of Land Management and the U.S. Park Police, can play a role?

A: As stated above, I favor expansion in rural areas both through DEA and through OCDETF task forces. As in all aspects of our law enforcement effort we support incorporating efforts of other agencies in a coordinated manner.

Q: As you know, the Bureau of Alcohol, Tobacco and Firearms is playing an increasing role in combatting violent crime, primarily through the agency's firearms jurisdiction. FBI Director William Sessions has written to me to express his concern about the fragmenting of law enforcement responsibility among federal agencies.

Do you think it is appropriate for the federal government to play a role in attacking violent street crime? Which agency is best positioned to accomplish this task?

A: It is indeed appropriate for the federal government to play a role in attacking violent street crime. As I indicated in my testimony before the Committee, if confirmed, attacking violent crime will be one of my priorities. While the vast majority of violent crime is properly subject to state and local jurisdiction, the federal government can play an important leadership role. For example, Congress has given the federal government enforcement and regulatory responsibilities in the areas of drug trafficking and firearms violations, because much of violent street crime has a nexus with drugs and firearms. Moreover, the federal government is often best situated to attack criminal organizations, including street gangs. The federal government can also contribute in the area of armed career criminals. The federal court system can also provide a model to the states as they grapple with problems of criminal justice administration, and the Justice Department's Bureau of Justice Assistance and National Institute of Justice can promote innovative pilot programs and research in the area of law enforcement.

No one agency is appropriately assigned sole responsibility for the entirety of this problem. The Department's task force

approach enables the Department to draw upon the expertise of various individual agencies, so that the best mix of resources and experience can be brought to bear.

Q: Do you agree that expanding BATF's activities in these areas poses a problem in terms of coordination?

A: BATF plays an important role and it is important that their activities in this area be coordinated. They are the backbone of our Triggerlock effort and we believe coordination has been improving because of the Justice Department's strong working relationship with the Treasury Department.

Q: What is the appropriate role for the FBI? Is it the lead federal law enforcement agency? If so, what does that mean? How should the numerous federal law enforcement agencies be coordinated?

A: Experience has shown that the FBI is one of the best law enforcement agencies in the world. It is also the federal agency with the most comprehensive statutory responsibilities and jurisdiction. Therefore, the FBI should continue to play a leading role in law enforcement and in coordinating the law enforcement efforts of other agencies, in conjunction with the Attorney General's overall responsibility for the federal law enforcement effort. As I testified, I am very concerned about the need to coordinate the various agencies involved in our law enforcement effort. We are continuously examining ways to improve that cooperation and I look forward to working with the Committee on this issue.

Q: What role should the Office of National Drug Control Policy play in coordinating such efforts?

A: Because so much of the violent crime problem currently confronting the Nation is related to drugs, it is important that law enforcement efforts be consistent with the government's larger efforts to combat the drug problem, and that law enforcement efforts and education and rehabilitative efforts reinforce each other for maximum effect. Accordingly, the Office's policy role is a critical one in this area.

Q: Mr. Barr, in last year's crime bill, Congress amended the Perkins Student Loan program to permit the Secretary of Education to repay the student loans of persons who commit to serve a number of years with a law enforcement agency. Unfortunately, this program is open to only the most needy students, and many currently serving police officers are not eligible.

Do you think the federal government should play a role in

providing financial assistance to prospective law enforcement officers?

Would you support an expansion of federal educational aid to law enforcement officers, particularly currently serving officers who want to complete an undergraduate degree?

A: Obviously, the best educated police force possible, in every locality, is in the best interests of the public. We look forward to working with the Committee, other federal agencies, and the state and local law enforcement communities to define the appropriate federal role in this important area. The Department of Justice does, however, have deep concerns about the proposed expansion of federal educational aid based on its prospective cost.

Q: Heroin trafficking and use appears to be on an upswing. Record opium production abroad has resulted in increased supplies to the U.S. making heroin more available and less expensive than ever before.

How seriously do you take the new heroin threat?

A: We take the heroin threat very seriously. In the past five years, production of opium has tripled in the Golden Triangle, and has quadrupled in Burma. Within the United States, heroin seizures have doubled in the past five years. Southeast Asian heroin alone accounts for 56% of the U.S. heroin market, up from just 22% in 1986. Sources of supply are not limited to Southeast and Southwest Asia; Mexico and Guatemala are significant sources of opium and heroin. There is also evidence that Colombian traffickers are expanding into the heroin trade.

The heroin situation is more complicated in some ways than the cocaine problem. The United States Government has little or no access to major source countries, including Burma, Laos and Iran. Myriad ethnic Chinese organizations are the world's primary trafficking mechanism. The Nigerian traffickers have also emerged as a significant source of U.S.-bound heroin.

Q: What, specifically, has the Justice Department done to combat this problem before heroin becomes the next "crack" cocaine?

A: The Department has been, and remains, committed to monitoring all heroin-related trends -- including production, trafficking and abuse -- to anticipate a heroin developments. We have also provided advice and counsel to policymakers in other federal agencies, as well as international officials, encouraging them to take the world's opium and heroin situation seriously. DEA is actively developing cases against the world's heroin kingpins and is aggressively seeking to separate these kingpins

from their assets. Our Asian Organized Crime initiative should also have a positive impact on fighting heroin trafficking and abuse. We held the first Asian Organized Crime Summit recently and at the Summit I spoke to my counterparts of the need for a coordinated effort in this area.

I will approach the heroin problem on the international level, drawing on our experience in combatting cocaine traffic. The Department, primarily through the Drug Enforcement Administration, is working with host country counterparts in most of the major opium producing and heroin trafficking countries to eliminate trafficking and strengthen host country laws to thwart the heroin trade. In the last year, new and important anti-narcotics legislation has been passed and/or implemented in Thailand, Hong Kong, the Peoples Republic of China and Japan. These laws make a number of critical drug enforcement tools available for the first time, including conspiracy prosecutions, money laundering prosecutions, controlled delivery, asset forfeiture and chemical controls. DEA provides training to host country counterparts and works side-by-side with them in investigations.

Domestically, DEA has a number of special enforcement programs (SEPs) designed to reduce the availability of heroin and to counter the trafficking activities of the major trafficking groups and their kingpins. SEP King Cobra is designed to focus on Southeast Asian heroin trafficking groups. DEA offices in New York, Los Angeles, Hong Kong and Bangkok have been particularly effective in dismantling some major Chinese organizations. The indictment of Chang Chi Fu (a/k/a Khun Sa) is but one accomplishment of this program.

SEP Balkan is directed at the highest levels of major criminal organizations trafficking in Southwest heroin to the United States. Southwest Asian trafficking groups are primarily based in New York, Newark, Los Angeles, Detroit, Chicago, Seattle, San Francisco and Houston.

SEP Aztec is directed at all facets of the Mexican heroin trade, and targets all aspects of the opium-to-heroin industry.

Q: What do you plan to do to increase the department's efforts to fight heroin trafficking and abuse?

A: We will continue to pursue vigorously the domestic and international efforts described above.

Questions from Senator Kennedy

Q: You played an important role in connection with the Justice Department and FBI policy of questioning Arab-American business and community leaders during Operation Desert Shield and Operation Desert Storm. The interview process evolved during the course of Iraq's occupation of Kuwait. Guidelines for questioning, particularly with regard to political beliefs or opinions, were clarified during the process of the interview program. It appeared that the FBI was singling out individuals for questions on the basis of ethnic background, and that questions were indeed asked about political beliefs and support or opposition to U.S. involvement in the Gulf.

How did the Justice Department develop guidelines or criteria for interviewing Arab-Americans and do you believe it would be worthwhile to consider whether revisions to your policy could be developed to limit the intrusiveness of such interview programs in the future?

A: The FBI interview program involving Arab-American leaders in the United States had two chief purposes: to solicit cooperation from these prominent leaders in assessing the potential for terrorist activity within the United States in response to the crisis in Kuwait, and to advise these leaders of the FBI's recognition of the potential for a possible backlash against the Arab-American population and the FBI's civil rights responsibilities.

With respect to the first purpose, we were approaching armed conflict where explicit threats of world-wide terrorism had been made by Saddam Hussein and others. The FBI took very seriously this potential threat of terrorism inside the United States. As one of many steps in response to that real and serious threat, the FBI undertook to solicit cooperation from the Arab-American community in fulfilling the FBI's counter-terrorism mission in the United States. This involved a number of voluntary interviews with Arab-American leaders. The FBI has had an outstanding record in preventing terrorism in the United States. They concluded that this was an appropriate step to take under the circumstances. The FBI was sensitive to the possible appearance of singling out Arab-Americans and was careful to emphasize in public statements that none of those interviewed was in any way suspected of any wrongdoing. Very few of those interviewed voiced any complaint to the Department or the agents involved concerning the interview.

The second purpose evolved from prior discussions with representatives of the Arab-American Anti-Discrimination Committee. In these discussions, the representatives repeatedly raised concerns that Arab-Americans would be subject to

discrimination and/or harassment based on incidents in the Middle East. These concerns weighed heavily in the FBI's decision to reach out to the Arab-American community, to alert them to the possibility of a backlash against the community and to assure them of the FBI's role in upholding the civil rights statutes.

It is clear that the Government needs to proceed cautiously whenever it conducts an interview program that could be subject to the type of criticisms identified in your question: I am confident that future interview programs conducted by the FBI will be further refined so as to limit the intrusiveness of the programs.

Q: Is it the goal of this Administration to make treatment available to every drug addict in the federal prison system? If so, how soon will that be a reality?

A: This Administration has taken the position that providing drug treatment programs to inmates at federal institutions is important given the high percentage of federal offenders who are drug-dependent. The Bureau of Prisons currently offers an extensive drug treatment service in each of its institutions. Every inmate entering a BOP institution is screened and assessed by a psychologist for drug treatment needs. Following that evaluation, every inmate with an identified need for drug treatment is required to participate in a mandatory 40-hour drug education program.

Providing adequate drug treatment to inmates has been and will continue to be a priority for the Department. For the period October 1, 1990, through March 30, 1991, more than 8,900 inmates participated in substance abuse programs. The number of program completions for FY 91 is projected to be approximately 17,800, as compared to 1,800 completions in 1987. In FY 91, the Bureau spent more than \$9.5 million on those programs. For FY 92, the Department has requested more than \$22 million for inmate programs of which \$5 million are for transitional services. The Department will continue to work with the Congress to provide funding for these programs and to increase their effectiveness.

Q: For several years, the Department's Bureau of Justice Assistance supported treatment programs in state and local criminal justice systems, but that support has decreased in recent years, especially in the Bureau of Justice Assistance's discretionary grant program. How would you describe the federal role in promoting state and local criminal justice treatment programs and the degree to which the Justice Department is committed to such programs?

A: BJA's discretionary grant program is capped by statute at \$50 million and, increasingly, even that amount is heavily earmarked. The focus of this program is to foster innovative

demonstration projects that hold promise for replication, to promote multi-jurisdictional and national scope projects and to provide training and technical assistance. Because of the limited amount of funding, it would be impossible for BJA to fund programs within all 21 Congressionally authorized purpose areas.

BJA does fund treatment-related programs. Through BJA's formula and discretionary grant program, direct services and treatment-related spending will amount to about \$100 million in FY 1991. States may use any portion of their BJA formula grant awards (\$423 million in FY 1991 and FY 1992) to initiate programs related to drug treatment.

Direct treatment services are funded through larger grant programs administered by the Department of Health and Human Services (HHS). HHS administers a \$512 million formula grant drug treatment program and a \$153 million discretionary grant program for drug treatment. Within this discretionary grant program \$15.9 million is designated for treatment in state correctional settings.

As mandated by the President's National Drug Control Strategy, and consistent with BJA's statutory authority, grants are intended to create a link between the criminal justice and drug treatment systems. Through drug testing, intermediate sanctions, and a host of other programs, the criminal justice system helps to identify offenders for treatment and to ensure that they remain in treatment. The Justice Department remains committed to ensuring the crucial linkage of identifying and referring those criminals to treatment who need treatment.

Q: What is the status of the study [of police abuse complaints received by the Civil Rights Division that former Attorney General Thornburgh announced the Department of Justice was conducting]?

A: The study of abuse complaints was part of an initiative announced by Attorney General Thornburgh to provide insight into the causes of police abuse in this country. As I testified in response to Senator DeConcini's questions, the Civil Rights Division has now completed its phase of the study and NIJ is in the process of expanding the data base. I anticipate completion of the study during this fiscal year.

Q: Upward mobility regulations affecting the litigation divisions and the Solicitor General's Office at the Justice Department have been in place for over ten years. An employee union representing the 1,100 clerical and technical employees in those divisions has complained to the Department that the Upward Mobility program has not been implemented. The Justice Management Division reportedly deferred negotiation of the issue when requested to take

action by the employee union. What is the status of that program, its funding and training, any delay in implementation, and the degree to which the program focuses on lower-graded support staff as opposed to Justice Department attorneys?

A: I am personally committed to continuing upward mobility and plan to pursue this program aggressively. The Upward Mobility Program was formally established in 1978 for the Offices, Boards and Divisions of the Department. The program provides for creating bridge and target positions and career development plans for employees in grade levels GS 1-8 who might otherwise be trapped in "dead-end" positions. Various divisions and offices have conducted formalized programs from time to time since the program was created.

However, many employees have also had the opportunity to move up from clerical ranks to technical and paraprofessional positions (e.g., legal technicians and paralegals) through other means, primarily the Merit Promotion Program. Since the Upward Mobility regulations were written and implemented, the Office of Personnel Management has significantly modified its qualifications standards, allowing employees to qualify for positions much more readily under the competitive merit promotion program than had previously been the case. This change has reduced the need for the formal Upward Mobility program by offering an alternative means for lower graded employees' advancement.

The Department has not yet negotiated a basic labor agreement with Local 3719 of the American Federation of State, Local and Municipal Employees, which was certified by the Federal Labor Relations Authority less than one year ago. Upward Mobility will certainly be one of many subjects negotiated in that master agreement. Groundrules have recently been completed, and we are about to begin the full-scale negotiations.

The formal Upward Mobility program is one means available for employee advancement. When personnel are selected under a formal Upward Mobility program, an individual development plan is initiated which identifies formal classroom and on the job training necessary for the incumbent to qualify for the target position. The cost for this training is assumed by the sponsoring organization. In addition, the Department Training Center regularly conducts Upward Mobility training classes for Department personnel. For FY 1992, ten such courses are scheduled. These courses cover such topics as reading improvement, writing skills, memory and concentration skills, speaking and listening skills, editing and proofreading, organization skills, time management and career development.

In addition, the Department has sponsored a Workforce 2000 training program for newly hired lower level clerical and secretarial personnel. Costs for this program average \$2,500 per participant for 8 weeks on intensive classroom and on the job training. All of these programs are directed to personnel in grade levels GS 2-6.

Q: In the case of United States v. Lopez, a federal district judge dismissed an indictment because of concerns over a prosecutorial guideline memorandum authored by your predecessor. The memorandum indicated that federal prosecutors could communicate directly with criminal defendants, notwithstanding local bar ethics rules precluding such contact without the consent of defense counsel. What is your view of the policy embodied in that memorandum and the extent to which it undermines the attorney-client relationship and other precepts of our adversarial system of justice?

A: This issue is under discussion with various outside groups, including the ABA Criminal Justice Committee. In general, we believe the Lopez case was wrongly decided, and have appealed. In that case, the defendant repeatedly insisted on meeting with the prosecutor outside the presence of his counsel. Instead of simply agreeing to meet with the defendant, the prosecutor and the defendant went before a federal magistrate, who made great efforts to be sure that the defendant understood his right to counsel before accepting an oral and written waiver from the defendant and approving the meetings. Counsel for a codefendant was present during the prosecutor's two subsequent meetings with the defendant, the defendant was read his Miranda rights before both meetings, and the prosecutor provided use immunity to the defendant for any statements made during the meeting.

The California ethical rule governing communications with represented parties did not prohibit the prosecutor's judicially-approved meetings with Lopez for a variety of reasons. First, the rule simply does not apply to such meetings, under well-established case law. Second, even if the rule did apply, the contact was obviously "authorized by law," and thus fell within a specific exception to the rule. Third, the rule cannot be interpreted to interfere with the defendant's constitutional right to self-representation, as provided in Faretta v. California, 422 U.S. 806 (1975). Finally, Lopez waived whatever rights he may have had under the ethical rule. Indeed, the ABA Standards for Criminal Justice presently provide that "Where the defendant has properly waived counsel, the prosecuting attorney may engage in plea discussions with the defendant. . . ."

It has long been established that legitimate, constitutional investigatory and prosecutorial contacts with targets of criminal investigations or indicted defendants do not run afoul of

disciplinary rules generally prohibiting communications with represented parties. The memorandum issued by Attorney General Thornburgh in June 1989 essentially reaffirmed the Department's commitment to traditional, common-sense interpretations of state bar ethical rules. The Department's position has not changed on this issue for many years, and I expect to continue to support traditional and long-standing interpretations of those rules.

Q: In a 1990 report, the House of Government Operations Committee compiled ten cases where federal judges found misconduct by Justice Department prosecutors. After extensive inquiry, the Committee found that no disciplinary action was taken by the Justice Department in any of the ten cases. The Committee also found that the Department's "Ethics Handbook" says nothing about such matters, and addresses only minor matters such as financial disclosure and outside activities. Can you assure the Committee that the Ethics Handbook will be reexamined and that you are committed to swift and strict discipline for prosecutors committing knowing violations of constitutional, statutory and bar ethical rules?

A: Yes.

Q: The Justice Department is reportedly beginning an effort to enforce Section 60501 of the Internal Revenue Code against lawyers who refuse to inform the government of the identities of clients who pay their fees in cash. Tens of thousands of IRS Form 8300's have been filed by lawyers seeking to balance their statutory reporting obligation with ethical duties owed to their clients. The choice that ethical lawyers face is between bar disciplinary action for violating client confidentiality rules or a five year jail term for failure to file a complete form. Will you agree to work with bar association representatives to devise prosecutorial guidelines to ensure that these enforcement actions are pursued only against lawyers who are genuinely engaged in criminal misconduct? If the underlying statute does not give you that flexibility, do you believe it should be amended?

A: The Department has welcomed and held an ongoing dialogue with Bar Association groups relating to Section 60501 and is sensitive to the need for balancing proper enforcement of the statute with the special concerns the statute may pose for lawyers. Although the statute is clear and provides no exception for cash payments of legal fees, the law established in the Goldberger & Dubin case provides ample flexibility for exercising restraint where "special circumstances" are shown to exist. Section 60501 of the Internal Revenue Code requires reporting of cash in excess of \$10,000 received in connection with a "trade or business." Under the statute, providing legal services is a

trade or business, and cash legal fees are, therefore, reportable on an IRS Form 8300. The Internal Revenue Code authorizes the IRS to obtain this information with summonses, enforceable only in court, and provides for civil and criminal penalties in the event of noncompliance.

In late 1989, the IRS referred to the Department the first IRS summons enforcement case against two law firms who had filed incomplete Forms 8300 on which they had refused on attorney-client privilege grounds to supply client identifying information. The Department of Justice filed summons enforcement actions in the United States District Court for the Southern District of New York, and in March of 1990, the District court found no privilege and ordered the summonses enforced. A three judge panel of the United States Court of Appeals for the Second Circuit unanimously affirmed. It found application of the cash reporting requirements to lawyer's fees constitutional and held that "absent special circumstances, concerning which there is no evidence whatever herein, the identification in Form 8300 of respondents' clients who make substantial cash fee payments is not a disclosure of privileged information." United States v. Goldberger & Dubin, P.C., 935 F.2d 501, 505 (2d Cir. 1991).

Since the Goldberger & Dubin case was filed, the Department of Justice has filed four other enforcement actions, the government prevailed in one of the cases -- the lawyer lost in the district court and did not appeal -- and three other cases are pending in litigation. The Department defended two other cases in which lawyers prematurely challenged the issuance of IRS summonses and prevailed in both cases. Although the Department has not adopted formal guidelines pertaining to summons enforcement actions against lawyers who file incomplete Forms 8300, all enforcement actions are carefully reviewed and are approved before filing by the Assistant Attorney General for the Tax Division. Consistent with the Goldberger & Dubin case, the Department has informed bar association groups that it will consider "special circumstances" presented to the IRS by lawyers in determining whether to seek judicial enforcement of a summons, but, as yet, the Department has seen no case in which a lawyer has attempted to make such a factual showing either to the IRS or in court.

So far, the Department of Justice has only filed summons enforcement actions seeking to obtain payor identifying information withheld by lawyers from Forms 8300. No civil penalty or criminal action has been brought against a lawyer for filing an incomplete Form 8300 with the IRS reporting the amount and date of receipt of cash legal fees but excluding -- on privilege or related grounds -- client identifying information. [In fact, the Department sees no basis for bringing a criminal action against a lawyer who because of bona fide concerns about bar association rules or privilege questions files an otherwise

accurate form but withholds client identifying information.] At this stage in the enforcement of Section 6051, the IRS has not requested and, as a result, the Department has not determined the appropriate circumstances, if any, for the imposition of civil [or criminal] penalties in response to a lawyer's incomplete Form 8300. On the other hand, lawyers who receive large amounts of cash and engage in money laundering or criminal structuring to evade reporting or deliberately fail to file even a partial Form 8300 claiming privilege would be subject to civil and/or criminal penalties.

The Department is proceeding cautiously and believes that this approach is faithful to the statute as currently drafted and adequately addresses the concerns expressed by the bar. Accordingly, we do not believe that any legislative action is required to address the issue at this time.

Questions from Senator Metzenbaum

Q: The Department of Justice has responsibility for enforcing a host of federal criminal statutes that permit prosecution for causing "serious bodily injury." These include the Resource Recovery and Conservation Act, the Clean Water Act, the Federal Food, Drug and Cosmetic Act, and other statutes which address tampering with consumer products, engaging in sexual abuse within the jurisdiction of the federal government, and using a hazardous device on a federal enclave.

Have those provisions been used often in the past five years? Will you provide me with information as soon as possible as to the number of cases filed, the statute under which each case was filed, and the result obtained?

A: A number of federal criminal statutes permit prosecution for causing serious bodily injury.

We have been able to obtain the following information from the Department's Environment and Natural Resources division, with respect to prosecutions under the environmental laws. As of July 31, 1991, at least seven indictments had been filed containing charges under the "knowing endangerment" provisions of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928(e), and three indictments had been filed containing charges under the analogous provision of the Clean Water Act (CWA), 33 U.S.C. § 1319(c)(3). Those statutes provide enhanced penalties for knowingly placing another human being in imminent danger of death or "serious bodily injury."

As of July 31, 1991, four corporations and eleven individuals have been indicted in those ten cases on knowing endangerment charges.

Of the seven RCRA cases, four were successfully prosecuted. Three cases resulted in jury convictions on "knowing endangerment" charges, and an individual in a multi-defendant case entered the first guilty plea to "knowing endangerment." United States v. Metro Container Corp., et al., E.D.Pa.; United States v. Albert S. Tumin, a/k/a Mark Hunter, E.D.N.Y.; United States v. Carlos Gomez, N.D.N.Y.; United States v. Protex Industries, Inc., et al., D.Col.

Convictions were received on numerous charges other than the "knowing endangerment" charge in one case containing "knowing endangerment" charges (United States v. Arthur Greer, M.D.Fla.). A guilty plea to another charge was accepted in a fifth case (United States v. Chemical Commodities, D. Kans.) In the sixth case, United States v. Commercial Metals, et al., S.D.Mo., the

corporation was acquitted and mistrials were declared regarding two individuals. The seventh case, United States v. Metro Container, et al., E.D. Pa., one of the individuals in the case recently entered a guilty plea to knowing endangerment.

Of the 3 CWA cases, two went to trial and the government obtained knowing endangerment convictions (corporation and two individuals) (United States v. Borjohn Optical Technology, Inc., and John Borowski, D. Mass. and United States v. Plaza Health Lab and Geronimo Villegas, M.D., E.D.N.Y.); pleas were entered to other charges in the third case by a corporation and three individuals.

A knowing endangerment provision was recently added to the Clean Air Act, 42 U.S.C. § 7413(c)(5), in which the phrase "serious bodily injury" is defined in substantially identical terms. That provision was added in the 1990 Clean Air Act Amendments, and no indictments have yet been brought.

Additional responsive information concerning prosecutions under other statutes will be provided as expeditiously as possible.

Q: Has the Department used its prosecutorial discretion in deciding which cases to prosecute? Please be specific as to the factors that informed any exercise of prosecutorial discretion.

A: As with every potential federal offense, the Department of Justice exercises prosecutorial discretion in deciding whether to bring cases brought under statutes involving serious bodily injury. Among the factors considered in evaluating a case for potential prosecution are the threshold issues of whether there is probable cause to believe the potential defendant's conduct constitutes a federal offense and whether the admissible evidence is likely to be sufficient to obtain and sustain a conviction. Other potentially pertinent factors include the nature and seriousness of the offense, the deterrent effect of prosecution, the potential defendant's culpability in connection with the offense, the potential defendant's history of criminal activity, the person's willingness to cooperate in the investigation or prosecution of others, the probable sentence or other consequences if the person is convicted, and federal law enforcement priorities. Also potentially pertinent are whether the person is subject to effective prosecution in another jurisdiction and whether there is an adequate non-criminal alternative to prosecution. The United States Attorneys must also consider the immediate practical problems of allocating prosecutorial resources within their districts, as well as local federal law enforcement priorities.

Q: Have the various definitions of "serious bodily injury" in those statutes proved workable? Again, will you provide me with information as soon as possible as to the statute in which each definition appears, and any particular problems experienced with each such definition?

A: A number of federal criminal statutes contain a definition of serious bodily injury. Among these are 18 U.S.C. §§ 247, 802, 831, 1365, 1864, 2245. Other statutes use the phrase "serious bodily injury" without a definitional section, such as 18 U.S.C. §§ 113 and 1153.

The statutes that contain clear definitions appear to be workable in that they provide a standard under which a jury can be instructed and decide the matter at issue.

Q: Are you aware of any problems the courts have had in interpreting these "serious bodily injury" provisions? Specifically, has the concept of 'serious bodily injury' been challenged as unconstitutionally vague? With what result?

A: We are aware of no successful constitutional challenge to any of the statutes on the grounds of vagueness. One unsuccessful challenge of which we are aware occurred in United States v. Protex Industries, 874 F.2d 740 (10th Cir. 1989). The defendant corporation contended that the statute at issue was unconstitutionally vague as applied on two grounds. First, it argued that the injury involved -- Type 2-A psychoorganic syndrome -- did not fall within the definition of "serious bodily injury." Second, it argued that in its jury instructions, the district court impermissibly broadened the scope of the statute by defining "imminent danger of serious bodily injury" as "a condition or combination of conditions that could reasonably be expected to cause death or serious bodily injury." The Court of Appeals for the Tenth Circuit rejected both arguments. 874 F.2d at 743-44.

Q: Some have suggested that increasing the maximum criminal penalties under the Occupational Safety and Health Act, and extending them to cover serious bodily injury, would make the enforcement process more adversarial and employees less likely to cooperate with OSHA. But attorneys in the environmental crimes unit at the Department of Justice -- as well as those in criminal enforcement at EPA -- have informed my staff that criminal and civil enforcement have been highly complementary. Indeed, they told us that the meaningful possibility of criminal prosecution actually enhanced EPA's civil enforcement efforts. Overall, do you believe these stronger penalties would improve the deterrent effect of the OSH Act's criminal provisions? Please explain your answer.

A: In appropriate circumstances, criminal enforcement of environmental laws has a role, along with civil and administrative enforcement, in helping contribute to our overall goals of deterrence, punishment and restitution. Environmental matters sometimes differ from other regulatory cases, because immediate responses to environmental problems are often necessary if they are to be effective. The Department of Labor, rather than the Department of Justice, handles most OSHA enforcement litigation. Accordingly, it would be in the best position to consider whether regulating the workplace involves particular considerations justifying sanctions and penalties different from other regulatory programs. I would certainly be willing to work with the Committee and the Department of Labor to explore the need for additional legislation in this area.

Q: What is the Department's position on modification of the McCarran-Ferguson antitrust exemption for the insurance industry?

A: As I testified, I am skeptical of broad antitrust exemptions. Although we have not reached a final position on this matter, we are analyzing proposals for modification of the exemption within the Administration, and look forward to working with the Committee to resolve the important issues involved.

Q: What is the Department's position on providing antitrust exemption for joint production ventures?

A: The Department opposes antitrust exemptions for joint production ventures. We do, however, support extending the provisions of the National Cooperative Research Act to such ventures, which guarantee the application of the antitrust rule of reason in the event such a venture is challenged and given parties the opportunity to limit potential liability to actual damages through notification to the antitrust enforcement agencies. We do not, however, support doing so in a manner that effectively discriminates against joint production ventures with foreign participants.

Questions from Senator DeConcini

Q: How much money do you estimate the Department of Justice Forfeiture Fund receives on an annual basis from law enforcement investigations outside the Department of Justice?

What percentage of those funds has gone back to those agencies?

A: I assume these questions are directed to efforts of other federal agencies. Neither we nor other federal agencies know how much in DOJ Forfeiture Fund Deposits are attributable to efforts of non-DOJ agencies. The best seizure statistics we have available by agency are appended in a separate table. Administrative forfeiture proceeds of Treasury agencies go to the Treasury's Miscellaneous Receipts account. Consequently, tens of millions of dollars in IRS seizures, for example, result in deposits to Miscellaneous Receipts rather than to the DOJ Fund.

During FY 1990 and 1991 we transferred \$12.6 million in DOJ Forfeiture Fund proceeds to the Customs Forfeiture Fund to reflect the assistance of Customs in cases where Justice agencies had the lead. We also allocated \$7.1 million from the DOJ Fund to IRS and BATF over the two-year period. All IRS and BATF funding requests authorized by law were fully funded.

Moreover, we have just secured the enactment of provisions in our Appropriations Act for FY 1992 enhancing our authority to allocate DOJ Fund monies to non-DOJ agencies, e.g., authorizing allocations for equipping of conveyances and payment of awards for non-DOJ agencies on the same basis as DOJ agencies. We have also secured authority to share DOJ Fund surpluses generated in FY 1992 and later years with all agencies in the DOJ Forfeiture Program, Justice and non-Justice agencies alike.

Finally, I should note that the percentage of forfeiture proceeds that investigative agencies receive necessarily depends not only upon statutory authority but upon how much is available after out-of-pocket costs and equitable sharing transfers to participating State and local agencies are satisfied. Within the DOJ program, federal litigators (U.S. Attorneys' Offices and the Criminal Division) and property managers (the U.S. Marshals Service) receive allocations from the DOJ Fund to reflect their essential roles in the total asset forfeiture process. We do not believe that investigative agencies alone should benefit from asset forfeiture proceeds.

Q: It is my understanding that the bulk of investigations on gangs conducted by the Federal Bureau of Investigations

(FBI) are on Asian gangs and those which resemble Cosa Nostra style organizations. Is that a correct assessment?

A: It is not entirely correct. Gang criminality has traditionally been addressed by the FBI within the Drug Program, the Organized Crime Program and the Violent Crimes and Major Offenders Program. These programs are working hand in hand to provide resources and investigative strategies with the underlying goal of reducing gang and street related violence in the United States. The focus of FBI gang investigations has been the criminal enterprise and its leadership. These investigations are long-term, resource intensive and are directed at dismantling the entire criminal organization. Generally, the rank and file members are not priority objectives of the investigations.

The FBI has continued to respond to gang problems, with the majority of the gang investigations being developed as task force cases. These cases target Blood/Crips Street Gangs, Jamaican Posses, national Outlaw Motorcycle Gangs, and other gangs, including Asian gangs, involved in violent crimes and drug crimes. In some instances, individual gangs may not be a national threat, but are nonetheless a real threat in numerous communities. In such cases, the FBI field offices have the latitude to select and prioritize targets in addressing the problems of gang related violence.

Q: Can you tell me how many agents the FBI has assigned nationwide to gang task forces?

A: The FBI has three priority programs addressing the multitude of gang related activity in the United States. The Organized Crime, Drug and Violent Crime/Major Offenders programs address the multitude of crimes indicative of gang-related activity. Also, many groups that the FBI investigates could be classified as gangs, but are not. As an example, a significant number of drug investigations could be deemed gang-related, but they are not so classified and, consequently, the number of Agents assigned to these investigations is not retrievable. The information below is therefore limited to instances where it is specifically retrievable as "gangs" and is not by any means a full accounting of the resources the FBI devotes to gang investigations.

The Organized Crime Program addresses gang-related activity within the Asian Organized Crime sub-program. Asian gangs that criminally support Asian Organized Crime groups are investigated by the FBI. Currently, the Organized Crime Program has Asian Organized Crime task forces operating in various divisions with approximately 35 Agents assigned.

The Drug Program has approximately 40 agents involved in drug-related gang task force investigations that are not

Organized Crime Drug Enforcement Task Force (OCDETF) Agents. These cases are addressed utilizing the task force concept with state and/or local police agencies. In addition, the FBI has another 594 Agents assigned to OCDETF, which by definition are task forces. A significant number of OCDETF investigations target gang activity. The number of gang investigations within the FBI's Drug Program is steadily increasing and virtually every FBI field Division has been involved in some type of gang-related drug investigation.

The Violent Crime/Major Offenders Program is violation-specific. However, the FBI has recently initiated an innovative approach to address violent street gangs through investigations of drug-related homicides. For example, the Washington Metropolitan Field Office currently has a Safe Streets Task Force which has successfully caused the indictment of 20 members of the "R Street Crew" which operates in Northwest Washington, D.C. Other field offices are in the process of forming similar task forces. In another task force with the Metropolitan Police Department focusing on the apprehension of violent fugitives, from August 1989 to June 1991, 1,365 arrests -- 303 for homicide -- have been made. This task force is still operational.

Q: Do you know how this compares to other Federal law enforcement agencies like the Bureau of Alcohol, Tobacco, and Firearms (ATF)?

A: No. Because the FBI classifies its investigations differently than ATF there is no way to make a meaningful comparison.

Q: How many gang cases have been brought to prosecution by the FBI?

A: An attempt to quantify prosecutions is not an effective measure of the success of investigations. Past practice has demonstrated that when numbers alone become the measure of success the quality of investigations decreases. This is why the FBI uses the enterprise theory of investigation, concentrating on the leadership and structure of organizations. Consequently, numbers in themselves are not meaningful. However, recognizing that the focus of investigations has been the leadership and organizational structure, involving long-term complex investigations of conspiratorial conduct, and use of sensitive investigative techniques, I submit the following data concerning cases classified strictly as involving "gangs." Not included are the thousands of other drug and violence related investigative results that were included in other programs but which could have fit within some definitions of "gangs"; e.g., 5 or more persons.

As a result of the FBI's Organized Crime Program investigations involving non-traditional organized crime, the

following accomplishments were recorded from 1986 through the first nine months of 1991: 415 convictions and 441 indictments. These numbers include Asian Gang investigations.

The Drug Program investigations, which primarily addressed the Los Angeles-based Blood/Crips, Jamaican Posses and Outlaw Motorcycle Gangs, has resulted in the following accomplishments from 1986 through the first nine months of 1991: 847 convictions and 851 indictments.

Q: To your knowledge, has the FBI ever denied a request from a U.S. Attorney to investigate outlaw street gangs?

A: Yes, but because of resource limitations and not because the FBI did not want to be involved in investigating gangs. During 1988, the U.S. Attorney for the Central District of California requested the FBI to join in a gang task force that was to be composed of various federal and local agencies. At that time, the FBI declined based largely on manpower limitations (among other things, the FBI at the time was conducting the "Polarcap" investigation, the largest money laundering case ever addressed by the Justice Department). Moreover, the planned task force was to implement its investigations in four phases, and the FBI asked to be recontacted about participating in the last two phases. Due to the limited manpower available, and the desire to have the greatest impact possible with its limited resources, the FBI did not believe that participating in the first two phases of the investigation -- involving searches of known or suspected gang members who were convicted felons on parole, and street buys of narcotics -- would be the most economical, effective or efficient use of its manpower.

Q: Do you believe there is any need to coordinate investigations on gangs through the Attorney General? If so, for what reason?

A: The House version of the Crime Bill (H.R. 3371) calls for the Attorney General, in consultation with the Secretary of the Treasury, to develop a national gang strategy. I strongly support this approach. As the nation's chief law enforcement officer, the Attorney General is in the best position to ensure that there are not redundant or ineffective uses of precious law enforcement resources by competing agencies. By developing a strategy that relies upon the expertise and available resources of the various federal law enforcement agencies, the Attorney General can ensure that all contribute significantly without needless waste of resources.

Q: In one of your answers to my questions on the Border Patrol during the hearing, you mention a survey that Norm Carlson had conducted, by your request, on the Immigration

and Naturalization Service (INS). Would you please supply me with a copy of that survey?

A: Yes. A copy of the survey was provided on November 14.

Q: I would also like to touch on an issue which has been brought to my attention regarding conditions at INS detention facilities across the country. As a member of the Helsinki commission, I am concerned that the human rights of individuals who are being detained in these facilities are being neglected.

Last summer, several human rights groups, including one in my home state of Arizona, presented documentation of incidents in which detainees, including minor children, were severely beaten. Many of these detainees are refugees seeking asylum, and I am concerned that these individuals are not being treated humanely and fairly. Although complaints have been filed with the Inspector General's office, little has been done to investigate these allegations.

As Attorney General, will you advocate the thorough investigation of complaints of human rights violations in INS detention centers?

A: Yes. It goes without saying that abuses of the sort you describe cannot be tolerated and that governmental entities that detain people must commit whatever resources are necessary to prevent them. Although I am informed that the number of allegations of such incidents in INS detention facilities is not high in comparison to the numbers for other such facilities, the only acceptable number is zero. Without pre-judging the merits of any particular case or the adequacy of the present investigatory process, I can promise that all complaints will be promptly and thoroughly investigated and that appropriate disciplinary and preventive measures will be taken in response to any abuses revealed by such investigations. We would appreciate receiving any information you have on this matter so we can be sure to investigate all allegations.

Q: I am also concerned about the conditions under which unaccompanied minors and young children are being detained. Many INS facilities fail to meet the same standards as other juvenile detention centers. INS Commissioner McNary has engaged in an ongoing dialogue with the human rights organizations in an effort to address this problem. If confirmed, will your office partake in ensuring that these children are not being exposed to unnecessarily harsh conditions while awaiting process of their claims for asylum?

A: Yes. Current INS policy is that juveniles in immigration proceedings should be released wherever possible into the custody of their parents or of other responsible adults. When it is absolutely necessary for a juvenile to remain in INS custody, such custody should be in appropriate child care facilities rather than in adult or juvenile detention facilities. As you point out, INS is currently engaged in discussions with a number of child welfare organizations in an effort to ensure that these policies are uniformly implemented, and my office will continue to monitor these efforts.

Q: Has the FBI been designated to direct the National Drug Center (NDIC) in Pennsylvania?

A: The FBI and the DEA have been tasked by me, as Acting Attorney General, to conduct jointly the operations of the NDIC, under the overall management of the FBI. An FBI official has been designated as the director of the new center.

Q: If so, why would the FBI be selected to direct this center over the Drug Enforcement Agency, which is the federal government's lead anti-drug agency?

A: As I indicated in my testimony before the Committee, I thought it was important, as part of forging a closer working relationship between the FBI and the DEA, to give the FBI the lead in the start-up phase of NDIC. NDIC will focus on strategic intelligence, an area in which, in my experience, the FBI has done an excellent job. The DEA has the lead in tactical intelligence.

Q: Please explain why you would not implement a rotating directorship for the NDIC as has worked extremely well on the Southwest Border with Operation Alliance?

A: We will consider a range of options, including those that draw upon the lessons of operations such as Operation Alliance, in determining how to manage the NDIC over the long term. As we move forward on those issues, we will welcome the Committee's views as to how the NDIC can be managed most effectively.

Q: Where does the Treasury Department and its drug fighting agencies fall within the NDIC?

A: The Treasury Department has made important and significant contributions to the Nation's drug fighting effort, and we are currently working toward phase two of the NDIC's operations, with substantial involvement from the Treasury Department. In addition, pursuant to the National Drug Control Policy, we are establishing a Law Enforcement Drug Intelligence Council that will help to sort out drug intelligence activities.

The Council's executive committee will be chaired by the Attorney General, and its membership will include high-level Treasury Department representatives.

Q: Is Treasury or the Customs Service, or BATF, designated as a deputy director of NDIC?

If not, why?

A: Not currently. For the implementation phase of the NDIC, we considered it important to keep the management structure lean, in order to promote the maximum degree of efficiency and coordination. Should it be appropriate to expand the management team at the NDIC in the future, we can consider which agencies should have representation on that management team. As we progress with the NDIC, we welcome the Committee's views as to its proper organization and management.

Q: Has Treasury been fully involved in the design and implementation of the NDIC?

If not, why?

A: The Treasury Department has been fully involved in the design and implementation of the NDIC. In the summer of 1990, the Department of Justice undertook a wide ranging and comprehensive effort to design an implementation plan for the operation of the NDIC. The Treasury Department, along with many other federal agencies, played a vital role in that effort. That plan is the underlying working document for the current effort to get the NDIC up and running.

Q: Why have there been no Financial Institution Fraud referrals from the FBI to the Secret Service since August 1991?

A: The premise of the question is incorrect. According to our figures, between July and October, 41 referrals were made. While the numbers are not yet in for all areas of the country, 15 additional referrals were made in October in Los Angeles alone. In August, the Secret Service reporting working on 136 cases, 79 of which were major. Through the end of September, they report working on 245 cases, 155 of which are major. Their figures for October are not yet in, but we understand they show an increase.

Q: Does the Department have a policy of instructing its agents not to conduct any FIF cases of under \$100,000?

A: We do not have a policy against handling any case under \$100,000. However, as explained in our consultations with Congress, we have been concentrating on cases involving more than \$100,000.

**NUMBER AND VALUE OF SEIZED ASSETS
BY FISCAL YEAR
(Source: AFTRAK 4/30/91)**

AGENCY	FY88		FY89		FY90	
DEA	10,855	\$416,888,655	19,536	\$1,028,191,855	18,944	\$ 1,105,036,561
FBI	3,559	198,103,938	5,050	537,993,686	3,929	241,081,693
INS	9,677	30,864,285	14,512	58,542,943	23,137	64,997,441
IRS	92	4,383,683	508	42,854,092	1,190	113,782,698
USPS	742	403,876	756	222,986,913	1,179	9,147,684
TOTAL	24,925	\$650,644,437	40,362	\$1,890,569,489	48,379	\$ 1,534,046,077

AGENCY	FY91	
DEA	7,963	\$318,369,971
FBI	1,539	97,219,554
INS	9,445	23,725,517
IRS	326	24,399,562
USPS	1,969	210,713,503
TOTAL	21,242	\$674,428,107

Note: FY91 figures reflect seizures through the first half of the fiscal year.

Questions from Senator Leahy

Q: Last year, I asked Attorney General Thornburgh about a provision that would effect the Freedom of Information Act. It was suggested by the Justice Department that the Department should have the authority to establish and collect fees to cover the cost of identifying, copying and distributing federal tax decisions. That provision would have distorted the Supreme Court's decision in Department of Justice v. Tax Analysts and would have permitted you to override the fee provisions of the Freedom of Information Act that we carefully negotiated with the Justice Department. He responded that while the Department had no intention of asking for a similar amendment, you would continue to monitor the issue. What is the current status of your review?

A: The Department has no intention of proposing the provision described in the question and now considers this issue closed. The Department looks forward to working closely with the Committee regarding any proposed amendment to the Freedom of Information Act.

Q: New technologies raise important civil liberties questions. One scholar recently suggested a 27th Amendment explicitly to extend civil liberties -- including freedom of speech, privacy, and protection against unreasonable search and seizure -- to new technologies. I am not endorsing that proposal, but it raises some interesting questions in light of changing technologies. Would you comment on the adequacy of constitutional protections for computer and new telecommunications technologies?

A: This is a very important area. Without having reviewed the matter in detail, I am not aware that anyone has identified the kind of serious deficiencies in our constitutional protections that would require a constitutional amendment. This reflects in part the fact that many of the relevant constitutional provisions were drafted in language general enough to encompass developments that were unheard of at the time the original Constitution and Bill of Rights were written. It also reflects the fact that Congress has often reacted to new technologies with statutes that protect liberty and privacy. That said, I agree that technical change is very important and that freedom and privacy are central to our political values.

Q: Innovations in computer technology create new opportunities for improving the flow of information and advancing our economic future, but they also create new

opportunities for abuse by those who seek to undermine our computer systems. I understand that the Department of Justice recently launched a new unit to fight computer crime.

What prompted the formation of the new computer crime unit? Has there been a major rise in computer crime in the past few years?

How do you balance the need to punish destructive conduct with the need to encourage legitimate experimentation and the free flow of information?

A: The incidence of computer crime has risen over the past several years. Computer crime is now estimated to cost U.S. companies billions of dollars. Computer crime has also become an international problem. Offenders are undeterred by national boundaries and can freely conduct their activities across international jurisdictions. In the past, there has been a perception that law-enforcement agencies are unable to respond effectively to incidents of computer crime.

To address this problem, the Department has designated computer crime as a priority area and has established a specialized Computer Crime Unit in the Criminal Division. The mission of the Computer Crime Unit includes devising a nationwide strategy for fighting the increasing incidence of computer crime, supplying technical and legal expertise to U.S. Attorney's offices, litigating select types of cases, proposing any necessary legislative changes to remedy defects in current law, and coordinating an international response to the problem.

Clearly, law enforcement in the area of computer technology must be sensitive to the needs for legitimate experimentation in new technologies and for the free flow of information. The Department is aware of such concerns and will consider them as specific issues arise. The Department will, of course, be responsive to the concerns of the Congress in developing policy in this area.

Q: World technological leadership depends on our ability to convert research and development advances into commercial production at a rapid pace. This is often a costly and risky endeavor. Do joint production ventures have a positive role to play in today's high-technology business environment?

A: Yes. Innovations in many fields, such as superconductivity, high definition television, robotics, computer-aided design and manufacturing, and most recently, controlled nuclear fusion emerge daily in laboratories and experimental facilities in the United States and throughout the

world. If American companies are to compete successfully in innovative, high-technology industries, they must be in a position to respond quickly and on an equal footing with international competitors with respect to developing and commercializing the products of that research. The costs of developing and commercializing new technologies and of efficiently providing the products and services they promise may be massive and far exceed the resources of a single firm. Cooperative production ventures can provide a vehicle for separate firms to share such costs as well as the substantial financial risks that developing and producing sophisticated new products can entail.

Q: During the hearing, you spoke to Senator Grassley about the importance of a level playing field. As American firms come under increased pressure from fast-paced technological innovation and development abroad, it is more important than ever to make sure that our companies do not function at a disadvantage. Many of our foreign competitors do not labor under the same antitrust restrictions that confront American businesses. Are federal antitrust laws discouraging legitimate and desirable cooperative activity that would enable domestic companies to compete more effectively in the global economy?

A: U.S. antitrust laws, properly enforced and interpreted, support the ability of U.S. firms to compete in domestic and international marketplaces. Promoting competition promotes innovation and efficiency, and thus international competitiveness. Because cooperative production ventures can frequently increase rather than diminish competition, the antitrust laws should not be an unwarranted deterrent to their formation. However, notwithstanding the current balanced and reasonable approach in government antitrust analysis, there remains concern that uncertainty as to the standard for review of such ventures under the antitrust laws coupled with the threat of treble-damage liability in private suits may be providing a significant disincentive to potentially procompetitive cooperative production. Legislation has been proposed by the Administration to reduce this uncertainty by fine-tuning the antitrust laws with respect to cooperative production as they were fine-tuned in 1984 with respect to cooperative research and development.

Q: One area where U.S. industry lags behind our foreign competitors is in its ability to form cooperative ventures. On February 22, 1991, Senators Thurmond, Biden, and I introduced S.479, the National Cooperative Research Act Extension of 1991. That bill would bring joint production and manufacturing ventures under the scope of the National Cooperative Research Act of 1984. S.479 is designed to

encourage companies to pool financial, human and scientific resources to compete in what is increasingly a worldwide marketplace. When it comes to improving America's competitiveness, nothing is more important than American workers. The National Cooperative Research Act Extension of 1991 contains a provision that provides the benefits of antitrust damage limitations to joint production ventures that provide American workers with jobs and advanced skills in new technologies. Why does the Department of Justice oppose this provision?

A: As originally introduced S.479 would have accomplished these excellent goals. As amended, however, the bill extends only to joint ventures whose principal facilities are in the United States and whose parties all have demonstrated a substantial commitment to the United States economy. The effect of the amendment would be to afford less favorable treatment under the antitrust laws to ventures with significant foreign ownership than to comparable ventures involving only domestic companies. Differing potential antitrust liability would be imposed on companies on the basis of factors that are irrelevant to antitrust analysis. This approach is unfair and invites retaliation, thereby denying American companies the very benefits they are seeking in areas where cooperation could be most helpful -- for example, areas in which foreign firms currently may have access to technology unavailable to U.S. firms. Prejudice to American companies in this regard translates directly into prejudice to their workers. And U.S. consumers will bear the ultimate costs of foregone opportunities for innovation and improvements in efficiency. I am committed to work with the Committee to devise an approach that would address these issues.

Q: Qualification of a company for reduced damage liability under the National Cooperative Research Act Extension does not turn on the nationality of individuals owning or controlling the company. The "principal facilities" and "substantial commitment" requirements apply equally to American-owned and foreign-owned companies. These provisions provide the benefits of antitrust damage limitations to companies--domestic or foreign--that provide benefits to American workers and to the American economy. What is wrong with helping American workers and the American economy?

A: There are other serious concerns with the limitations that have been added to S.479. They would conflict with efforts to open up markets to trade and investment without conditions or performance requirements, and could lead to retaliation and similar differential treatment of U.S. firms abroad. Lost opportunities to expand trade in world markets would further harm U.S. firms and their workers. Secretary Brady, Secretary Mosbacher and U.S. Trade Representative Hills joined former

Attorney General Thornburgh in more fully describing the Administration's concerns with legislation that would result in either explicit or implicit discriminatory antitrust treatment of joint ventures with foreign ownership or foreign facilities in their letter to Senator Biden of July 17, 1991.

Q: Some critics of joint production ventures claim that cooperation means mergers and acquisitions--that it means a boost for the big guy at the expense of our smaller entrepreneurs. If we give industry the option of cooperating, will we be encouraging mergers and acquisitions, or will we be providing alternatives to mergers and acquisitions?

A: I agree with your observation that joint ventures provide a highly significant alternative to mergers and acquisitions. As noted above, cooperative production ventures can allow separate firms to share the costs and risks of developing and producing innovative new products. Cooperation can also significantly increase efficiency by allowing firms to benefit from economies of scale or scope, or synergies resulting from the combining of complementary assets or skills. Moreover, while cooperative ventures may reduce competition between the venturers themselves in developing or commercializing new technology involved in the venture itself, such ventures do not eliminate competition between firms in other aspects of their businesses. In sum, cooperative production joint ventures may be an effective means for U.S. firms to improve their competitiveness without merger.

Questions from Senator Grassley

Q: You indicated that you would enforce the Immigration and Nationality Act of 1990's provisions requiring the exclusion of PLO officials, although you were not familiar with the exact provisions of the law. Section 601(3)(B) of the Act provides:

Any alien who has engaged in a terrorist activity, or a consular officer of (sic) the Attorney General knows or has reason to believe, is likely to engage after entry in any terrorist activity, is excludable. An alien who is an officer, official, representative, or spokesman of the Palestine Liberation Organization is considered, for purposes of this Act, to be engaged in terrorist activity.

PLO officials are required by law to be excluded. Will you be an advocate for enforcement of this law in the event the State Department seeks a waiver of this provision in order to admit PLO officials?

A: I am committed to vigorous enforcement of the law as it relates to the admission of aliens involved in terrorist activity. As you have indicated, the Immigration Act presumes that an officer, official, representative, or spokesman of the PLO is engaged in terrorist activity. However, unlike several other grounds of inadmissibility for which no waiver exists, Congress has specifically authorized the Attorney General to approve a recommendation of the Secretary of State or the consular officer that this ground of inadmissibility be waived for a terrorist or suspected terrorist who seeks admission as a nonimmigrant. 8 U.S.C. 1182(c)(3). I can assure you that any such recommendation received from the State Department would be carefully reviewed, on a case-by-case basis, to determine whether the exercise of favorable discretion would be in the best interests of the United States, in the light of national security concerns and other factors.

Q: Could you please provide information concerning the visit of two Syrian generals earlier this year to the United States? I understand they were sponsored by the U.S. Information Agency and they toured several facilities maintained by the Drug Enforcement Agency. Please explain why officials of the most notorious drug trafficking regime would be afforded access to our anti-drug efforts and resources.

A: The specific visit to which you refer was not brought to my attention. The United States Information Agency (USIA) --

which is not part of the Department of Justice -- in its role of promoting a greater understanding of United States principles and policies, often invites foreign government leaders and representatives to the United States (more than 5,000 per year) to consult with their counterparts and to observe American society and institutions.

The International Visitor's Program visit sponsored by USIA involving Syrian Generals Ali Darboli and Hassan Al-Huri took place in May of this year. The U.S. Government regularly sponsors foreign officials' visits to the United States to learn more about what the U.S. is doing to eliminate narcotics trafficking and abuse. These visits also provide us with an opportunity to make known to foreign governments our position on the need for greater international cooperation in fighting narcotics.

The visit of the Syrian Government officials was arranged for these reasons. No classified information, equipment, techniques or operations were given or shown to the Syrian visitors. DEA facilities were visited where nonclassified briefings/tours were presented, similar to those given to the many foreign visitors who visit the DEA each year.

Our DEA office in Nicosia, along with embassy officials, has been meeting with Syrian anti-narcotics officials in Damascus for several years to encourage increased counter-narcotics activity by the Syrian authorities and bilateral cooperation on this issue. The trip to the United States furthered this dialogue. Although Syria has much more to do to prove to the United States that they are serious about eliminating narcotics, we have been encouraged by certain recent signs of Syrian-Lebanese cooperation on narcotics issues and have urged the implementation of a sustained and coordinated opium eradication program in the Bekaa Valley.

Q: Was Yosef Heider permitted into the United States and, if so, why?

A: The FBI will arrange to brief you on this and the related classified questions you asked at your convenience.

Questions from Senator Specter

Q: During testimony to the House Foreign Affairs Committee on September 4, 1990, Secretary of State Baker stated that the idea of creating an international criminal court is a good one and wondered why it had not been looked at before. A State and Justice Department study (dated 2 October 1991) did look at such a proposal and concluded that it continues to have serious concerns about establishing such a court.

How extensive a role did the Department of Justice play in preparing the report?

A: The Department of Justice, through the Criminal Division's Office of International Affairs, has worked closely with the Department of State's Legal Adviser in analyzing the proposal for an international criminal court. By agreement between the two departments, State drafted the October 1991 report; Justice reviewed the draft, suggested revisions and concurred in the final report.

Q: What is your personal view on the desirability of an international criminal court?

A: In general, I support having the most options possible to law enforcement to deal with terrorists. I have not had a chance to review the practical problems raised concerning the proposed International Court of Justice and I would want to do so before reaching a conclusion on the Court's desirability.

Q: In your view, would not such a court help us the U.S. in its fight against international drug traffickers? For example, while Colombia has stopped extraditions to the U.S. and has reduced the intensity of prosecution of drug traffickers, President Gaviria has publicly stated his endorsement of an international criminal court.

A: In many instances of drug trafficking or terrorism, prosecution of criminal cases may require great political will. There is no substitute for that kind of determination when confronting a lawless group -- such as international drug traffickers -- that is willing to destroy society. Without the required political will in the relevant countries, I don't think the proposed international criminal court will help us to fight drug traffickers.

Q: Too many countries who apprehend terrorists or drug traffickers such as Abu Abbas or Matta fail to take action to prosecute or extradite them for fear of retribution. Would you not agree that an international criminal court

would offer such countries a third alternative to state prosecution or extradition?

A: Yes.

Q: The State-Justice report notes that the creation of such a court would be enormously complex and would require consensus on numerous important issues. What role if any has the Department of Justice been playing with the Sixth Committee of the United Nations on the proposal to establish an international criminal court?

A: A former Deputy Assistant Attorney General, Ron Gainer, who is a member of the UN Committee on Crime Prevention and Control, is working very closely with the Department of Justice in monitoring the development of the international criminal court and focussing the attention of the international legal community on some of the problems that we perceive.

Q: What role has the Department of Justice been playing in the UN and other fora to develop the consensus for such a court?

A: We have actively participated in meetings held under the auspices of the United Nations to consider the problems of establishing the court and we will continue to do so. Let me stress that we do not go to those meetings as nay-sayers: we have tried to suggest solutions as well as problems, and there has been progress in resolving some of the outstanding questions.

Q: What role will DOJ play on the International Law Commission to study and report on underlying and fundamental questions related to an international criminal court?

A: The International Law Commission is an independent international organization composed of experts from the member countries. The United States has nominated the Legal Adviser to the United States Mission at the United Nations to be a member of the Commission. The Department of Justice does not have any direct role to play in the operations of the Commission, although we will make our expertise and support available to it through the Department of State.

Questions from Senator Heflin

Q: What is the Department's position on proposals to permit Federal Judges to carry firearms?

A: The Federal Judicial Conference has indicated its intention to seek legislation authorizing judges to carry firearms. Although officials of the Marshals service have expressed concern, they have not indicated opposition to the proposal. The Marshals Service, which has responsibility for the security of federal judicial facilities and for the protection of members of the judiciary, is concerned by the prospect of the unanticipated introduction of a weapon in a confrontation situation. Marshals Service security personnel are trained to work as a team in a high-threat environment. An untrained individual, no matter how well-intentioned, who unexpectedly produces a handgun in a threat situation could unnecessarily jeopardize his/her own safety as well as the safety of the Marshals Service personnel.



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

November 25, 1991

The Honorable Joseph R. Biden, Jr.
Chairman
Committee on the Judiciary
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

Enclosed are additional responses to Senator Metzenbaum as a result of the hearing on the nomination of William P. Barr to be Attorney General.

Sincerely,

W. Lee Rawls

W. Lee Rawls
Assistant Attorney General

Enclosure

SUBJECT: Senator Metzenbaum's supplemental request for information on cases under federal statutes involving the phrase "serious bodily injury."

This memorandum is in response to Senator Metzenbaum's supplemental request for information concerning federal criminal statutes which use the term "serious bodily injury," the number of cases prosecuted under each statute, and the results obtained.

The following information is based on a Lexis search to identify criminal statutes using the phrase "serious bodily injury" and reports regularly provided by the United States Attorneys' offices to the Executive Office for the United States Attorneys. We have not included criminal environmental statutes, on which the Environment and Natural Resources Division has already reported. The time period covered is Fiscal Year 1987 through Fiscal Year 1991 to date, a period of five years. Fiscal year 1987 began on October 1, 1987, and Fiscal Year 1991 ended on September 30, 1991. Conceivably, there may be other statutes which did not surface during our Lexis search which contain the element of "serious bodily injury".

I. ASSAULT AND AGGRAVATED SEXUAL ABUSE

The overwhelming majority of the criminal division cases involving the phrase "serious bodily injury" are based on the assault and aggravated sexual abuse statutes. These statutes are discussed below.

A. 18 U.S.C. § 113

(assault in special maritime and territorial jurisdiction)

Title 18 U.S.C. § 113 governs assaults within the special maritime and territorial jurisdiction of the United States. Subsection (f) of Section 113 pertains to assaults resulting in serious bodily injury.

The number of cases reported as having been brought under 18 U.S.C. § 113(f) (assault resulting in serious bodily injury) in the past five years is 107. The results obtained are given below.

18 U.S.C. § 113 (f)

(assault resulting in serious bodily injury)

FY87-FY91(to date)

Result	Number of cases
Guilty Plea	65
Guilty Verdict after trial	18

Acquittal	3
Other termination	21
<hr/> Total	<hr/> 107

In addition, during the same five year period, an additional 425 cases were reported as having been brought under 18 U.S.C. § 113, without any specification of the subsection. These cases undoubtedly include some cases brought under subsection (f). However, in order to determine whether or not the case was brought under subsection (f), it would be necessary to have someone in each United States Attorney's office retrieve each case file, including many which have been retired to the Federal Records Center.

The results obtained for the 425 cases reported only under 18 U.S.C. § 113 are given below. It should be noted that this is not the total number of cases brought under Section 113, as many cases are reported under the particular subsection.

<u>18 U.S.C. § 113</u> <u>(cases reported without indication of subsection)</u>	
Result	Number of Cases
Guilty plea	274
Guilty verdict after trial	79
Acquittal	22
Other termination	50
<hr/> Total	<hr/> 425

B. 18 U.S.C. § 2241
(Aggravated sexual abuse -
special maritime and territorial jurisdiction)

Title 18 U.S.C. § 2241 governs aggravated sexual abuse in the special maritime and territorial jurisdiction of the United States. Subsection (a) governs knowingly causing another person to engage in a sexual act by force or threat of force. More specifically, subsection (a)(2) covers those who knowingly cause another person to engage in a sexual act by "threatening or placing that other person in fear that any person will subjected to death, serious bodily injury, or kidnaping;" 18 U.S.C. § 2241(a)(2). Only two cases, both guilty pleas, have been reported as having been brought under 18 U.S.C. § 2241(a)(2). Such cases, however, may be included in those

reported under 18 U.S.C. § 2241 and those brought under 18 U.S.C. § 2241(a). The results obtained in those cases is set forth below:

Cases reported under 18 U.S.C. § 2241 and 2241(a)

Result	Number of Cases
Guilty plea	82
Guilty verdict after trial	43
Acquittal	12
Other termination	29
<u>Total</u>	<u>166</u>

C. 18 U.S.C. § 1153

(Offenses committed within Indian country)

Title 18 U.S.C. § 1153 incorporates by reference for Indian country many of the offenses for the special maritime and territorial jurisdiction of the United States. Included among these are assaults resulting in serious bodily injury and sexual abuse committed by threat of serious bodily injury, where these are committed by an Indian against an Indian in Indian country. The results reported for cases brought under 18 U.S.C. § 1153 are set forth below and are not broken down by the specific nature of the offense.

18 U.S.C. § 1153

(offenses committed within Indian country)

Result	Number of Cases
Guilty plea	437
Guilty verdict after trial	76
Acquittal	31
Other termination	54
<u>Total</u>	<u>598</u>

II. OTHER CRIMINAL STATUTES

Other criminal statutes under which prosecutions were reported which may involve "serious bodily injury" are 18 U.S.C. § 1365 (tampering with consumer products) and 18 U.S.C. § 1959

(violent crime in aid of racketeering). These statutes are discussed below.

A. 18 U.S.C. § 1365
(consumer product tampering)

Title 18 U.S.C. § 1365 governs consumer product tampering, false reports of consumer product tampering, and threats to tamper with consumer products. Subsection (a) governs actual tampering and subsection (a)(3) governs those cases where the tampering resulted in serious bodily injury to any individual. No cases have been reported as having been brought under 18 U.S.C. § 1365 (a)(3). Such cases may, however, be among those reported as having been brought under 18 U.S.C. § 1365 or 18 U.S.C. § 1365(a). The result obtained in those cases is reported below:

Cases reported under 18 U.S.C. § 1365 and 1365 (a)

Result	Number of Cases
Guilty plea	11
Guilty verdict after trial	3
Acquittal	0
Other termination	0
<hr/> Total	<hr/> 14

B. 18 U.S.C. § 1959
(Violent crime in aid of racketeering activity)

Title 18 U.S.C. § 1959 governs violent crime committed in aid of racketeering activity. Subsection (a)(3) is applicable when the violent crime involved is assault with a dangerous weapon or assault resulting in serious bodily injury. The U.S. Attorney's offices have reported one case prosecuted under Section 1959, which resulted in a guilty plea. Until recently, such cases were handled by the Organized Crime Strike Forces.

49 U.S.C. App. § 1472(k)
(Crimes Aboard Aircraft in Flight)

Title 49 U.S.C. App. § 1472 contains the criminal penalties for a wide variety of aviation offenses. Subsection (k) governs many crimes committed aboard an aircraft in flight, including assault resulting in serious bodily injury. The following cases have been reported as having been prosecuted under 49 U.S.C. § 1472(k) during the past five years. There may also be additional cases involving assault resulting in serious bodily

injury included within those reported under Section 1472 without specification of subsection.

Cases reported under 49 U.S.C. App. § 1472(k)

Result	Number of Cases
Guilty plea	11
Guilty verdict after trial	4
Acquittal	2
Other termination	7
<hr/> Total	<hr/> 24

C. Miscellaneous Statutes

No prosecutions have been reported by the United States Attorneys during the past five years for the following offenses which make reference to serious bodily injury: 18 U.S.C. § 247 (obstruction of persons in the free exercise of religious beliefs); 18 U.S.C. § 831 (prohibited transactions involving nuclear materials); 18 U.S.C. § 1091 (genocide); 18 U.S.C. § 1864 (hazardous or injurious devices on federal land); and 18 U.S.C. § 2332 (terrorism).

○